

**RULES  
OF  
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
BUREAU OF ENVIRONMENT  
DIVISION OF AIR POLLUTION CONTROL**

**CHAPTER 1200-3-27  
NITROGEN OXIDES**

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**1200-3-27-.01 DEFINITIONS**

- (1) For the purpose of this rule, the following definitions apply:
  - (a) “Facility” means any source or group of sources located within a contiguous area, and under common control.
  - (b) “Nitrogen Oxides” means all oxides of nitrogen except nitrous oxide.
- (2) The definitions in Chapter 1200-3-2 apply for those terms not defined in Chapter 1200-3-27.

**Authority:** T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed March 5, 1993; effective April 19, 1993.

**1200-3-27-.02 GENERAL PROVISIONS AND APPLICABILITY**

- (1) It is the purpose of this chapter to establish emission standards and requirements for certain sources of nitrogen oxides.
- (2) Upon mutual agreement of any air contaminant source and the Technical Secretary, an emission limit more restrictive than that otherwise specified in this chapter may be established. Also, upon mutual agreement of any air contaminant source and the Technical Secretary, operating hours, process flow rates, or any other operating parameter may be established as a binding limit which the source must adhere to. Any items mutually agreed to shall be stated as a special condition for any permit or order concerning the source. Violation of this mutual agreement shall result in enforcement action.
- (3) Nothing in this chapter shall be construed to exempt sources from meeting other applicable rules in this division and standards and requirement derived from or according to rules of this division, including, but not limited to, new source review requirements, permit conditions, and standards and requirements mutually agreed to or included in the State Implementation Plan.
- (4) No owner or operator subject to these regulations may build, erect, install, or use any article, machine, equipment, process, or other method the use of which conceals emissions that would otherwise constitute non-compliance with an applicable regulation. This includes, but is not limited to, the use of gaseous diluents to achieve compliance, and the piecemeal carrying out of an operating to avoid coverage by a regulation that applies only to operations larger than a specified size.
- (5) The owner or operator of a source for which legal notice must be published to effect a source-specific compliance method, compliance demonstration method, record keeping record, reporting record, etc., shall be responsible for all costs associated with publishing the required legal notice.

(Rule 1200-3-27-.02, continued)

- (6) The owner or operator of any facility in Davidson, Rutherford, Sumner, Williamson, or Wilson County which has actual emissions from stationary sources of 25 tons or more of nitrogen oxides during a calendar year shall report to the Technical Secretary information and data concerning these emissions and VOC emissions. This information and data shall be in the form prescribed by the Technical Secretary, and shall be submitted before March 31 of the year following the calendar year for which the information and data is reported. The first report shall be for the 1993 calendar year, and shall be submitted before March 31, 1994. Each report shall be certified by an official of the company. Records must be kept by the facility, and maintained for a period of 3 years, documenting the information and data in each report.

**Authority:** T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed March 5, 1993; effective, April 19, 1993. Amendment filed April 18, 1994; effective July 2, 1994. Amendment filed May 10, 1994; effective July 24, 1994. Amendment filed August 14, 1995; effective October 28, 1995. Amendment filed September 9, 1996; effective November 23, 1996.

### 1200-3-27-.03 STANDARDS AND REQUIREMENTS

- (1) Emission standards for sources of nitrogen oxides apply as follows:
  - (a) Any owner or operator of a stationary source in Davidson, Rutherford, Sumner, Williamson, or Wilson County which emits or has the potential to emit 100 tons per year or more of nitrogen oxides (NO<sub>x</sub>) before control shall apply reasonably available control technology (RACT) to control NO<sub>x</sub> emissions from that source; and
  - (b) Specifically, the owner or operator of a tangentially-fired coal burning boiler having heat input capacity in excess of 600 million BTU per hour in Davidson, Rutherford, Sumner, Williamson, or Wilson County shall not allow emissions of nitrogen oxides from that boiler in excess of 0.45 pound per million BTU (30-day rolling average) (RACT).
- (2) In calculation to determine whether the 100-ton-per-year threshold specified in Subparagraph (1)(a) of this rule is met, the nitrogen oxides contribution from all process emissions sources and fuel burning equipment, including those sources and that equipment listed for exemption in Paragraph (4) of this rule, shall be totaled.
- (3) Compliance schedules apply as follows:
  - (a) The owner or operator of a boiler subject to the requirements of Subparagraph (1)(b) of this rule shall:
    1. Submit a final control plan, acceptable to the Technical Secretary, for the installation of nitrogen oxides emission control systems and/or modifications of fuel burning equipment to the Technical Secretary by April 26, 1994;
    2. Complete construction or installation of equipment by May 31, 1995; and
    3. Demonstrate full compliance with nitrogen oxides reasonably available control technology by July 31, 1995, using approved test methods and procedures; and
  - (b) The owner or operator of any process emission source or fuel burning equipment subject to the requirements of Subparagraph (1)(a) but not Subparagraph (1) (b) of this rule shall either:
    1. Satisfy the schedule as follows:
      - (i) Submit a demonstrations of appropriate reasonably available control technology by February 25, 1994;

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- (ii) Submit a final control plan, acceptable to the Technical Secretary, for the installation of nitrogen oxides emission control systems and/or modifications of the source or equipment to the Technical Secretary by April 26, 1994;
  - (iii) Complete construction or installation of equipment by May 31, 1995; and
  - (iv) Demonstrate full compliance with nitrogen oxides reasonably available control technology by July 31, 1995, using approved test methods and procedures; or
- 2. In lieu of satisfying the schedule specified in Part 1 of this subparagraph, satisfy the schedule as follows:
  - (i) By February 25, 1994, submit a demonstration, acceptable to the Technical Secretary, that reasonably available control technology for nitrogen oxides from the process emission source or fuel burning equipment according to the schedule specified in Part 1 of this subparagraph is not practicable, for example, due to equipment unavailability or system unreliability;
  - (ii) Within 60 days after approval by the Technical Secretary of this demonstration, submit a schedule, acceptable to the Technical Secretary, containing dates for accomplishment on the process emission source or fuel burning equipment of the steps listed in the schedule specified in Part 1 of this subparagraph; and
  - (iii) Satisfy the schedule approved by the Technical Secretary.
- (4) The reasonably available control technology requirements of this rule shall not apply to any of the following:
  - (a) A process emission source or fuel burning installation which neither emits nor has the potential to emit one ton or more per year of nitrogen oxides before control;
  - (b) Fuel burning equipment or a component of a process emission source which does not operate between April 1 and October 31; or
  - (c) An air pollution control device which is installed to effect compliance with a requirement of other chapters of Division 1200-3.

**Authority:** T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed September 7, 1993; effective November 27, 1993.

#### **1200-3-27-.04 STANDARDS FOR CEMENT KILNS.**

- (1) The requirements of this rule apply only to kilns with process rates of at least the following:
  - (a) Long dry kilns-----12 tons per hour (TPH);
  - (b) Long wet kilns-----10 TPH;
  - (c) Preheater kilns-----16 TPH; and
  - (d) Precalciner and preheater/precalciner kilns-----22 TPH.
- (2) For the purpose of this rule, definitions apply as follow:

(Rule 1200-3-27-.04, continued)

- (a) "Clinker" means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.
  - (b) "Long dry kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.
  - (c) "Long wet kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.
  - (d) "Low-NO<sub>x</sub> burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing, and establish fuel-rich zones for initial combustion.
  - (e) "Mid-kiln system firing" means secondary firing in kiln systems by injecting fuel at an intermediate point in the kiln system using a specially designed fuel injection mechanism for the purpose of decreasing nitrogen oxide (NO<sub>x</sub>) emissions through:
    - 1. Burning part of the fuel at a lower temperature; and
    - 2. Reducing conditions at the fuel injection point that may destroy some of the NO<sub>x</sub> formed upstream in the kiln burning zone.
  - (f) "Portland cement" means a hydraulic cement produced by essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.
  - (g) "Portland cement kiln" means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.
  - (h) "Precalciner kiln" means a kiln system where the feed to the kiln is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.
  - (i) "Preheater kiln" means a kiln system where the feed to the kiln is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.
- (3) After May 31, 2004, the owner or operator of any Portland cement kiln subject to this rule shall not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with at least one of the following:
- (a) Low-NO<sub>x</sub> burners;
  - (b) Mid-kiln system firing;
  - (c) Alternative control techniques approved by the Technical Secretary and the EPA as achieving at least the same emissions decreases as with low-NO<sub>x</sub> burners or mid-kiln system firing; or
  - (d) Reasonably available control technology approved by the Technical Secretary and the EPA.
- (4) The owner or operator subject to the requirements of Paragraph (3) of this rule shall comply with the requirements as follow:
- (a) By May 31, 2004, submit to the Technical Secretary the identification number and type of each kiln subject to this rule, the name and address of the facility where the kiln is located, and the

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name and telephone number of the person responsible for demonstrating compliance with Paragraph (3); and

- (b) By October 31, 2004, submit to the Technical Secretary a report documenting for that kiln the total NO<sub>x</sub> emissions from May 31, 2004, through September 30, 2004, and beginning in 2005 submit by October 31 of each year to the Technical Secretary a report documenting NO<sub>x</sub> emissions from May 1 through September 30 of that year.
- (5) By May 31, 2004, the owner or operator of a kiln subject to this rule shall submit to the Technical Secretary a demonstration of compliance with the requirements of Paragraph (3). If compliance is being achieved by use of prescribed equipment, for example low-NO<sub>x</sub> burners or mid-kiln system firing, the demonstration of compliance shall be written certification to the Technical Secretary that this equipment is installed and is in use. If compliance is being achieved by use of alternative control techniques approved by the Technical Secretary and the EPA, demonstration of compliance shall as specified by the Technical Secretary and the EPA. In the case of compliance proposed to be achieved by use of alternative control techniques, a plan for compliance demonstration shall be submitted to the Technical Secretary by May 1, 2003. Upon receipt the Technical Secretary shall immediately forward a copy of the plan to the EPA. By November 1, 2003, the Technical Secretary shall specify in writing to the owner or operator of the kiln how compliance shall be demonstrated, this specification consistent with methods and requirements specified by the EPA following its review of the submitted plan.
- (6) By December 31 of each year, beginning in 2004, the owner or operator of a kiln subject to this rule shall submit to the Technical Secretary a written certification that compliance with the requirements of Paragraph (3) has been maintained during that year's five-month period May 1 through September 30, except for 2004 when compliance is to be maintained from May 31 through September 30. The methods of determining that this compliance has been maintained shall be as specified on the major source operating permit issued for the facility at which the kiln is operated.
- (7) Beginning May 31, 2004, the owner or operator of a kiln subject to this rule shall maintain records for May 31 through September 30 of that year, and in subsequent years for May 1 through September 30, that include the data as follow:
  - (a) The date, time, and duration of any startup, shutdown, or malfunction in the operation of the cement kiln or its emissions monitoring equipment or of any scheduled maintenance activity that affects NO<sub>x</sub> emissions or emissions monitoring;
  - (b) The results of any compliance testing; and
  - (c) Other data required by permit to be maintained.
- (8) The records listed in Paragraph (7) of this rule shall be retained on-site for a minimum of 2 years following the calendar year for which they are made and shall be made available to the Technical Secretary for his review upon request.
- (9) The requirements of this rule shall not apply to periods of scheduled maintenance activities that affect NO<sub>x</sub> emissions.
- (10) The requirements of this rule shall not apply to periods of malfunctions, startups, and shutdowns. These periods are subject to the requirements of Chapter 1200-3-20.

**Authority:** T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed July 9, 2001; effective September 22, 2001.

**1200-3-27-.05 RESERVED.**

**Authority:** T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed July 9, 2001; effective September 22, 2001.

**1200-3-27-.06 NOX BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS (40 CFR 96).**

- (1) The provisions of 40 CFR Part 96 concerning the NOx Trading Budget Program are hereby adopted by reference with the following revisions:

- (a) The provisions of Sec. 96.4(a)(1) as adopted for Tennessee are revised to read as follows:

With the exception of a unit under Sec. 96.4(a)(2) that prior to September 22, 2001 was allocated NOx allowances as an industrial boiler, this allocation to be submitted to the EPA to be included in the state implementation plan, any unit that any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25MWe and sells any amount of electricity during a control period; or

- (b) The provisions of Sec. 96.2 concerning the terms “NOx allowance” and “NOx Budget emissions limitation” as adopted for Tennessee are revised to read as follows:

NOx allowance means a limited authorization by the Administrator under the NOx Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter, except as provided under Sec. 96.54(f). No provision of the NOx Budget Trading Program, the NOx Budget permit application, the NOx Budget permit, or an exemption under Sec. 96.4(b) or Sec. 96.5 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of all sections of this part except Sec. 96.41, Sec. 96.42, or Sec. 96.88, “NOx allowance” also includes an authorization to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter by the permitting authority or the Administrator in accordance with a State NOx Budget Trading Program established, and approved and administered by the Administrator, pursuant to the Federal regulation referred to in the definition of “NOx Budget Trading Program” in Sec. 96.2.

NOx Budget emissions limitation means, for a NOx Budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under Sec. 96.54 (a), (b), (e), and (f) adjusted to account for excess emissions for a prior control period under Sec. 96.54 (d) or to account for withdrawal from the NOx Budget Program, or for a change in regulatory status, for a NOx Budget opt-in source under Sec. 96.86 or Sec. 96.87.

- (c) The provisions of Sec. 96.5(c)(2) as adopted for Tennessee are revised to read as follows:

The Administrator will allocate NOx allowances under subpart E of this part 96 to a unit exempt under this section. For each control period for which the unit is allocated one or more NOx allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such NOx allowances.

- (d) The provisions of Sec. 96.6(c)(1) as adopted for Tennessee are revised to read as follows:

The owners and operators of each NOx Budget source and each NOx Budget unit at the source shall hold NOx allowances available for compliance deductions under Sec. 96.54(a), (b), (e), or (f) as of the NOx allowance transfer deadline, in the unit’s compliance account and the source’s overdraft account in an amount not less than the total NOx emissions for the control period from the unit, as determined in accordance with subpart H of this part 96, plus any amount necessary to account for actual heat input under Sec. 96.42(e) for the control period or to account for

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excess emissions for a prior control period under Sec. 96.54(d) or to account for withdrawal from the NOx Budget Trading Program, or a change in regulatory status, of a NOx Budget opt-in unit under Sec. 96.86 or Sec. 96.87.

- (e) The provisions of Sec. 96.23(a) as adopted for Tennessee are revised to read as follows:

Each NOx Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under Sec. 96.22.

- (f) The provisions of Sec. 96.40 as adopted for Tennessee are revised to read as follows:

Sec. 96.40 State trading program budget.

The State trading program budget allocated by the permitting authority under Sec. 96.42 for a control period will equal the total number of tons of NOx emissions apportioned to the NOx Budget units under Sec. 96.4 in the State for the control period. The state trading program budget to be allocated to units under Sec. 96.4(a)(1) is 25814 tons/season, as specified for electricity generating units in the state in the EPA's final published budgets for states under the EPA's NOx SIP call. The budget to be allocated to units under Sec. 96.4(a)(2) is 5666 tons/season, the total of budgets for non-EGU units subject to this rule 1200-3-27-.06 and included in the EPA's inventory for the NOx SIP call. The portion of the state trading program budget allocated to units under Sec. 96.4(a)(2) shall be as set forth in the state implementation plan. The nitrogen oxides allowance (NOx allowance) allocated under Sec. 96.4(a)(2) must be subjected to a public hearing and submitted to the EPA for approval as a revision to the state implementation plan. The permitting authority may allocate additional allowances to NOx Budget units that have been generated through NOx emission reductions from industrial, mobile, and area source sectors that are permanent, enforceable, quantifiable, and surplus as determined by and approved by the Administrator and the permitting authority.

- (g) The provisions of Sec. 96.41 as adopted for Tennessee are revised to read as follows:

Sec. 96.41 Timing requirements for NOx allowance allocations.

1. The NOx allowance allocations for units that receive allocations under parts (h)2 and 3 of this paragraph for the control periods in 2004 through 2018 are as specified in Sec. 96.42.
2. By April 1, 2016, and April 1<sup>st</sup> of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for the control period in the year that is three years after the year of the applicable deadline for submission under this subparagraph. If the permitting authority fails to submit to the Administrator the NOx allowance allocations in accordance with this subparagraph, the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.
3. By April 1, 2005 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for any NOx allowances remaining in the applicable allocation set-aside for the prior control period.

- (h) The provisions of Sec. 96.42 as adopted for Tennessee are revised to read as follows:

Sec. 96.42 NOx allowance allocations.

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1. (i) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> Budget unit under Sec. 96.4 will be:
  - (I) For a NO<sub>x</sub> allowance allocation under Sec. 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under Sec. 96.4(a)(1) or for the control period in 1995 if the unit is under Sec. 96.4(a)(2); and
  - (II) For a NO<sub>x</sub> allowance allocation under Sec. 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NO<sub>x</sub> allocation is being calculated.
- (ii) The unit's total heat input for the control period in each year specified under subpart (i) of this part will be determined in accordance with the requirements for a continuous emission monitoring system if the NO<sub>x</sub> Budget unit was otherwise subject to the requirements for a continuous emission monitoring system for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements for a continuous emission monitoring system for the year.
2. For each control period under Sec. 96.41, the permitting authority will allocate to all NO<sub>x</sub> Budget units under Sec. 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under subpart 1(i) of this subparagraph, a total number of NO<sub>x</sub> allowances equal to 95.7 percent, of the tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40 in accordance with the following procedures:
  - (i) The permitting authority will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit under Sec. 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under part 1 of this subparagraph, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.
  - (ii) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> Budget units under Sec. 96.4(a)(1) in the State for a control period under subpart (i) of this part does not equal 95.7 percent of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> Budget units for the control period under this subpart (i) so that the total number of NO<sub>x</sub> allowances allocated equals 95.7 percent of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95.7 percent of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units divided by the total number of NO<sub>x</sub> allowances allocated under this subpart (i), and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.
3. For each control period under Sec. 96.41, the permitting authority will allocate to all NO<sub>x</sub> Budget units under Sec. 96.4(a)(2) in the State that commenced operation before May 1<sup>st</sup> of the period used to calculate heat input a NO<sub>x</sub> allowance in the state implementation plan to be submitted to EPA for approval.
4. For each control period under Sec. 96.41, the permitting authority will allocate NO<sub>x</sub> allowances to NO<sub>x</sub> Budget units under Sec. 96.4 in the State that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate



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heat input under subpart 1(i) of this subparagraph, in accordance with the following procedures:

- (i) The permitting authority will establish separate allocation set-aside for units under Sec. 96.4 (a)(1) and units under Sec. 96.4 (a)(2). For units under Sec. 96.4(a)(1) the allocation set-aside will be allocated NOx allowances equal to 4.3 percent of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40, rounded to the nearest whole NOx allowance as appropriate. For units under Sec. 96.4(a)(2), the allocation set-aside for new source growth will be the NOx allowances remaining in the state trading program budget for units under Sec. 96.4(a)(2) after allocations are set for all NOx budget units under Sec. 96.40. For units under Sec. 96.4(a)(2) the allocation set-aside will also be established in the state implementation plan.
- (ii) The NOx authorized account representative of a NOx Budget unit may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NOx allowances, starting with the control period during which the NOx Budget unit commenced, or is projected to commence, operation. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NOx Budget unit.
- (iii) In a NOx allowance allocation request under subpart (ii) of this part, the NOx authorized account representative for units under Sec. 96.4(a)(1) may request for a control period a NOx allowance in accordance with the following:
  - (I) For NOx Budget units that commenced operation after May 1, 1996, and before January 1, 2001, an allowance that does not exceed any of the following three limits: 0.15 lb/mmBtu; the allowable NOx emissions under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan. NOx allowances granted under this provision may be transferred at the request of the NOx authorized account representative to NOx Budget units which are owned by the same entity as the NOx Budget unit for which the allocation is made and are within the state.
  - (II) For NOx Budget units that commence operation after January 1, 2001, an allowance that does not exceed any of the following three limits: the product of the unit's maximum design heat input (in mmBtu/hr), the number of hours remaining in the control period starting with the first day of the control period on which the unit operated or is projected to operate, and 0.013 lb/mmBtu; the allowable NOx emission under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan. No allocation shall be made to any unit that commences operation after January 1, 2001, with an emission rate greater than 0.013 lb/mmBtu.
- (iv) In a NOx allowance allocation request under subpart (ii) of this part, the NOx authorized account representative for units under Sec. 96.4(a)(2) may request for a control period a NOx allowance in an amount that does not exceed any of the three following limits: 0.15 lb/mmBtu; the allowable NOx emissions under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan.

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- (v) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under subpart (ii) of this part in the order that a complete construction permit application is received by the permitting authority.
    - (I) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Sec. 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of subparts (ii) and (iii) of this part and, for units under Sec. 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of subparts (ii) and (iii) of this part.
    - (II) If the applicable allocation set-aside has an amount of NOx allowances not less than the number requested (as adjusted under item (I) above), the permitting authority will allocate the amount of the NOx allowances requested (as adjusted under item (I)) to the NOx Budget unit.
    - (III) If the applicable allocation set-aside has a smaller amount of NOx allowances than the number requested (as adjusted under subpart (i) above), the permitting authority will deny in part the request and allocate only the remaining number of NOx allowances in the allocation set-aside to the NOx Budget unit.
    - (IV) Once an applicable allocation set-aside has been depleted of all NOx allowances, the permitting authority will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated.
  - (vi) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under subpart (v) of this part and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated to the NOx Budget unit.
5. For each NOx Budget unit that is allocated NOx allowances under part 4 of this subparagraph for a control period, the Administrator will deduct NOx allowances under Sec. 96.54(b) or (e) to account for the actual emissions from the unit during the control period. After making this deduction for compliance for the control period for all such units that are allocated NOx allowances under part 4, the Administrator will notify the permitting authority of the NOx allowances that were not deducted for compliance, these allowances then to be treated as additions, or reversions, for this control period to the allocation set-aside for the control period. Following this notification, the permitting authority will allocate any NOx allowances remaining in the allocation set-asides for the control period to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:

Unit's share of NOx allowances remaining in allocation set-aside = (Total NOx allowances remaining in allocation set-aside) x (Unit's NOx allowance allocation) ÷ (State trading program budget excluding allocation set-aside)

where:

“Total NOx allowances remaining in allocation set-aside” is the total number of NOx allowances remaining in the allocation set-aside for the unit type for the control period to

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which the allocation set-aside applies. Unit type is as described under Sec. 96.4(a)(1) and (2);

“Unit’s NOx allowance allocation” is the number of NOx allowances allocated under part 2 or 3 of this subparagraph to the unit for the control period to which the allocation set-aside applies; and

“State trading program budget excluding allocation set-aside” is the State trading program budget apportioned to the unit type under Sec. 96.40 for the control period to which the allocation set-aside applies minus the allocation set-aside. Unit type is as described under Sec. 96.4(a)(1) and (2).

- (i) The provisions of Sec. 96.53 as adopted for Tennessee are revised to read as follows:

Sec. 96.53 Recordation of NOx allowance allocations.

1. The Administrator will record the NOx allowances for 2004 for a NOx Budget unit allocated under subpart E of this part 96 in the unit’s compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2004 for a NOx Budget opt-in unit in the unit’s compliance account as allocated under Sec. 96.88(a).
2. By May 1, 2002, the Administrator will record the NOx allowances for 2005 for a NOx Budget unit allocated under subpart E of this part 96 in the unit’s compliance account, except for NOx allowances under Sec. 96.4(b)(4)(ii) or Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2005 for a NOx Budget opt-in unit in the unit’s compliance account as allocated under Sec. 96.88(a).
3. By May 1, 2003, the Administrator will record the NOx allowances for 2006 for a NOx Budget unit allocated under subpart E of this part 96 in the unit’s compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2006 for a NOx Budget opt-in unit in the unit’s compliance account as allocated under Sec. 96.88(a).
4. By May 1, 2004, the Administrator will record the NOx allowances for 2007 for a NOx Budget unit allocated under subpart E of this part 96 in the unit’s compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2007 for a NOx Budget opt-in unit in the unit’s compliance account as allocated under Sec. 96.88(a).
5. Each year starting with 2005, after the Administrator has made all deductions from a NOx Budget unit’s compliance account and the overdraft account pursuant to Sec. 96.54 (except deductions pursuant to Sec. 96.54(d)(2)), the Administrator will record:
  - (i) NOx allowances, in the compliance account, as allocated to the unit under subpart E of this part 96 for the third year after the year of the control period for which such deductions were or could have been made;
  - (ii) NOx allowances, in the general account specified by the owners and operators of the unit, as allocated under Sec. 96.5(c)(2) for the third year after the year of the control period for which such deductions are or could have been made; and

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- (iii) NOx allowances, in the compliance account, as allocated to the unit under Sec. 96.88(a).
- 6. Serial numbers for allocated NOx allowances. When allocating NOx allowances to a NOx Budget unit and recording them in an account, the Administrator will assign each NOx allowance a unique identification number that will include digits identifying the year for which the NOx allowance is allocated.
- (j) The provisions of Sec. 96.54 as adopted for Tennessee are revised to read as follows:

Sec. 96.54 Compliance.

  - 1. NOx allowance transfer deadline. The NOx allowances are available to be deducted for compliance with a unit's NOx Budget emissions limitation for a control period in a given year only if the NOx allowances:
    - (i) Were allocated for a control period in a prior year or the same year; and
    - (ii) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under Sec. 96.60 by the NOx allowance transfer deadline for that control period.
  - 2. Deductions for compliance.
    - (i) Following the recordation, in accordance with Sec. 96. 61, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under part 1 of this subparagraph to cover the unit's NOx emissions (as determined in accordance with subpart H of this part 96), or to account for actual emissions under Sec. 96.42(e) for the control period:
      - (I) From the compliance account; and
      - (II) Only if no more NOx allowances available under part 1 of this subparagraph remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).
    - (ii) The Administrator will deduct NOx allowances first under item (i)(I) of this part and then under item (i)(II):
      - (I) Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined; or

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- (II) Until no more NOx allowances available under subparagraph (a) of this paragraph remain in the respective account.
- 3.
  - (i) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under part 2, 4, or 5 of this subparagraph. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.
  - (ii) First-in, first-out. The Administrator will deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOx allowances by serial number under subpart (ii) of this part, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:
    - (I) Those NOx allowances that were allocated for the control period to the unit under subpart E or I of this part 96;
    - (II) Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part 96, in order of their date of recordation;
    - (III) Those NOx allowances that were allocated for a prior control period to the unit under subpart E or I of this part 96; and
    - (IV) Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part 96, in order of their date of recordation.
- 4. Deductions for excess emissions.
  - (i) After making the deductions for compliance under part 2 of this subparagraph, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NOx allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.
  - (ii) If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.
  - (iii) Any allowance deduction required under this subparagraph shall not affect the liability of the owners and operators of the NOx Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:
    - (I) For purposes of determining the number of days of violation, if a NOx Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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(II) Each ton of excess emissions is a separate violation.

5. Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part 96:
  - (i) The NO<sub>x</sub> authorized account representative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted from each such unit's compliance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.
  - (ii) Notwithstanding item 2(ii)(I) of this subparagraph, the Administrator will deduct NO<sub>x</sub> allowances for each such unit until the number of NO<sub>x</sub> allowances deducted equals the unit's identified percentage (under subpart 5(i) of this subparagraph) of the number of tons of NO<sub>x</sub> emissions, as determined in accordance with subpart H of this part 96, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.
6. The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to part 2, 4, or 5 of this subparagraph.
- (k) The provisions of Sec. 96.55 as adopted for Tennessee are revised to read as follows:

Sec. 96.55 Banking.

1. NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:
  - (i) Any NO<sub>x</sub> allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO<sub>x</sub> allowance is deducted or transferred under Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part 96, or subpart I of this part 96.
  - (ii) The Administrator will designate, as a "banked" NO<sub>x</sub> allowance, any NO<sub>x</sub> allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to Sec. 96.54 (except deductions pursuant to Sec. 96.54(d)(2)) and that was allocated for that control period or a control period in a prior year.
2. Each year starting in 2005, after the Administrator has completed the designation of banked NO<sub>x</sub> allowances under subpart 1(ii) of this subparagraph and before May 1 of the year, the Administrator will determine the extent to which banked NO<sub>x</sub> allowances may be used for compliance in the control period for the current year, as follows:
  - (i) The Administrator will determine the total number of banked NO<sub>x</sub> allowances held in compliance accounts, overdraft accounts, or general accounts.
  - (ii) If the total number of banked NO<sub>x</sub> allowances determined, under subpart (i) of this part, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NO<sub>x</sub> Budget units are

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located, any banked NOx allowance may be deducted for compliance in accordance with Sec. 96.54.

- (iii) If the total number of banked NOx allowances determined, under subpart (i), to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked allowance may be deducted for compliance in accordance with Sec. 96.54, except as follows:
  - (I) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located and divided by the total number of banked NOx allowances determined, under subpart (i), to be held in compliance accounts, overdraft accounts, or general accounts.
  - (II) The Administrator will multiply that ratio by the number of banked NOx allowances in each compliance account or overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with Sec. 96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with Sec. 96.54, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under Sec. 96.54.
- 3. Any NOx Budget unit may reduce its NOx emission rate in the 2001, 2002, or 2003 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2004 to the unit in accordance with the following requirements.
  - (i) Each NOx Budget unit for which the owner or operator requests any early reduction credits under subpart (iv) of this part shall monitor NOx emissions in accordance with subpart H of this part. Each budget unit for which early reduction credits are requested must have monitoring data for at least one control period prior to the control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during any control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.
  - (ii) NOx emission rate and heat input under subparts (iii) through (v) below shall be determined in accordance with subpart H of this part 96.
  - (iii) Each NOx Budget unit for which the owner or operator requests any early reduction credits under subpart (iv) below shall reduce its NOx emission rate, for each control period for which early reduction credits are requested as follows:
    - (I) For EGUs, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NOx emission rate in the 2000 control period, this emission rate for the 2000 control period having been established through monitoring in accordance with subpart H of this part 96.
    - (II) For non-EGUs, to less than 95 percent of the unit's NOx emission rate in the 2000, 2001, or 2002 control period, that control period being the earliest one for which monitoring data acceptable to the Administrator and the Technical Secretary establishes the NOx emission rate for that unit. For

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example, emission rate reductions achieved in the 2003 control period would be as compared to the 2000 control period if the NO<sub>x</sub> emission rate for the 2000 control period had been accepted by the Administrator and the Technical Secretary as having been established.

- (iv) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that meets the requirements of subparts (i) and (iii) of this part may submit to the permitting authority a request for early reduction credits for the unit based on NO<sub>x</sub> emission rate reductions made by the unit in the control period for 2001, 2002, and/or 2003 in accordance with subpart (iii) of this part.
  - (I) In the early reduction credit request, the NO<sub>x</sub> authorized account representative for EGUs may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the acid deposition control requirement for the unit type and the unit's NO<sub>x</sub> emission rate for such control period in lb/mmBtu, divided by 2000 lb/ton, and rounded to the nearest ton. For non-EGUs, the NO<sub>x</sub> authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the unit's emission rate prior to the NO<sub>x</sub> emission rate reduction in lb/mmBtu and the unit's NO<sub>x</sub> emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton; the difference must reflect only reductions additional to prior existing requirements.
  - (II) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NO<sub>x</sub> emission rate reductions on which the request is based are made or such later date approved by the permitting authority.
- (v) The permitting authority will allocate NO<sub>x</sub> allowances, to NO<sub>x</sub> Budget units meeting the requirements of subparts (i) and (iii) of this part and covered by early reduction requests meeting the requirements of item (iv)(I) of this part, in accordance with the following procedures:
  - (I) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of subparts (i) and (iii) and item (iv)(II) of this part are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of subparts (ii) and (iv) of this part.
  - (II) If the State's compliance supplement pool of 10565 tons/season has an amount of NO<sub>x</sub> allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 (as adjusted under item (v)(I) of this part), the permitting authority will allocate to each NO<sub>x</sub> Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under item (v)(I)). If the State's compliance supplement pool, after deduction of the early reduction credits for the 2001 control period, has an amount of NO<sub>x</sub> allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2002 (as adjusted under item (v)(I)), the permitting authority will allocate to each NO<sub>x</sub> Budget unit covered by such accepted requests one allowance for each early reduction credit requested



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(as adjusted under item (v)(I)). The same procedure will be followed for early reduction credit requests from the 2003 control period as from the 2002 control period.

- (III) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for any control period (as adjusted under item (v)(I) of this part), the permitting authority will allocate NOx allowances for that control period to each NOx Budget unit covered by such accepted requests according to the following formula:

$$\text{Unit's allocated early reduction credits} = \left[ \frac{\text{Unit's adjusted early reduction credits}}{\text{Total adjusted early reduction credits requested by all units}} \right] \times \text{(Available NOx allowances from the State's compliance supplement pool)}$$

where:

"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for the control period in accepted early reduction credit requests, as adjusted under item (v)(I).

"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for the control period in accepted early reduction credit requests, as adjusted under item (v)(I).

"Available NOx allowances from the State's compliance supplement pool" is the number of NOx allowances in the State's compliance supplement pool with appropriate deductions made for any early reduction credits previously allocated.

- (vi) By May 1, 2004, the permitting authority will submit to the Administrator the allocations of NOx allowances determined under subpart (v) of this part. The Administrator will record such allocations to the extent that they are consistent with the requirements of subparts (i) through (v) of this part.
- (vii) NOx allowances recorded under subpart (vi) of this part may be deducted for compliance under Sec. 96.54 for the control periods in 2004 or 2005. Notwithstanding part 1 of this subparagraph, the Administrator will deduct as retired any NOx allowance that is recorded under subpart (vi) and is not deducted for compliance in accordance with Sec. 96.54 for the control period in 2004 or 2005.
- (viii) NOx allowances recorded under subpart (vi) are treated as banked allowances in 2005 for the purposes of parts 1 and 2 of this subparagraph.
4. One thousand NOx tons of the State's compliance supplement pool is set aside to be allocated to units under Sec. 96.4(a)(2). If this specified amount of the compliance supplement pool is not all or in part allocated to units under Sec. 96.4(a)(2), then qualifying units under Sec. 96.4(a)(1) may be allocated these NOx tons.
5. The permitting authority may issue some or all of the compliance supplement pool to sources that demonstrate a need for an extension beyond the May 31, 2004 compliance deadline according to the following procedures:

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- (i) The permitting authority shall initiate the issuance process by the later date of September 30, 2002, or after the State issues credit according to the procedures in part 3 of this subparagraph.
  - (ii) The permitting authority shall complete the issuance process by no later than May 31, 2004.
  - (iii) The State shall issue credit to a source only if the source complies with all applicable requirements referred to in the definition of "NO<sub>x</sub> Budget Trading Program" in sec. 96.2.
  - (vi) The State shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocation compliance supplement pool credits under this paragraph.
- (l) The provisions of Sec. 96.70(b)(1) as adopted for Tennessee are revised to read as follows:
- NO<sub>x</sub> Budget units for which the owner or operator intends to apply for early reduction credits under part (k)3 of this paragraph must comply with the requirements of this subpart by May 1, 2000, for credits to be earned from the 2001 control period; by May 1, 2001, for credits from the 2002 control period; and May 1, 2002, for credits from the 2003 control period.
- (m) The provisions of Sec. 96.70(c) as adopted for Tennessee are revised to read as follows:
- Reporting data prior to initial certification. The owner or operator of a NO<sub>x</sub> Budget unit under paragraph (b)(3), (b)(4), (b)(5), or (b)(6) of this section shall determine, record and report NO<sub>x</sub> mass emissions, heat input rate, and any other values required to determine NO<sub>x</sub> mass emissions (e.g., NO<sub>x</sub> emission rate and heat input rate, or NO<sub>x</sub> concentration and stack flow rate) in accordance with the provisions for reporting data prior to initial certification of the mass emission provisions for a continuous emission monitoring system, from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted optional SO<sub>2</sub> emission data protocol for gas-fired and oil-fired units and NO<sub>x</sub> emission estimation protocol for gas-fired peaking units and oil-fired peaking units under provisions for a continuous emission monitoring system, or low mass emission excepted monitoring methodology referred to in Sec. 96.71(b), is provisionally certified.
- (n) The provisions of Sec. 96.71(b)(2) as adopted for Tennessee are revised to read as follows:
- Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that may significantly affect the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input or to meet the continuous emission monitoring system QA and QC requirements, the owner or operator shall recertify the monitoring system according to the recertification approval process provisions for a continuous emission monitor system. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emission monitoring system according to the recertification approval process provisions mentioned above. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or complete replacement of an existing continuous emission monitoring system.
- (o) The provisions of the opening and Sec. (1) of Sec. 96.71 (b)(3)(v)(A) as adopted for Tennessee are revised to read as follows:

(Rule 1200-3-27-.06, continued)

The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under the disapproval provisions of the certification and recertification approval processes, the disapproval of certification application provisions for low mass emission units using excepted methodology referred to in Sec. 96.71(b), and the consequences of audits provisions of the QA and QC requirements for a continuous emission monitoring system and continuing until the date and hour that the continuous emission monitoring system or component thereof can be adjusted, repaired, or replaced and certified tests successfully completed:

1. For units that the owner or operator intends to monitor or monitors for NO<sub>x</sub> emission rate and heat input rate or intends to determine or determines NO<sub>x</sub> mass emissions using the low mass emission excepted methodology specified in Sec. 96.71(b)(3)(ii), the maximum potential NO<sub>x</sub> emission rate and the maximum potential hourly heat input of the unit; and
- (p) The provisions of Sec. 96.71(c) as adopted for Tennessee are revised to read as follows:

Initial certification and recertification procedures for low mass emission units using the excepted methodologies referred to in Sec. 96.71(b). The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements for a continuous emission monitoring system and the applicable requirements for low mass emission units using the excepted methodologies referred to in Sec. 96.71(b). The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (b) of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NO<sub>x</sub> Budget Trading Program as of the following dates:

1. For a unit that does not have monitoring equipment initially certified or recertified for the NO<sub>x</sub> Budget Trading Program as of the date on which the NO<sub>x</sub> authorized account representative submits the certification application for low mass emissions excepted methodology, starting on the date of such submission until the completion of the period for the Administrator's review.
  2. For a unit that has monitoring equipment initially certified or recertified for the NO<sub>x</sub> Budget Trading Program as of the date on which the NO<sub>x</sub> authorized account representative submits the certification application for low mass emissions excepted methodology for the unit and that reports data on an annual basis under Sec. 96.74(d), starting January 1 of the year after the year of such submission until the completion of the period for the Administrator's review.
  3. For a unit that has monitoring equipment initially certified or recertified for the NO<sub>x</sub> Budget Trading Program as of the date on which the NO<sub>x</sub> Authorized Account Representative submits the certification application under for low mass emissions excepted methodology for the unit and that reports on a control season basis under Sec. 96.74(d), starting May 1 of the control period after the year of such submission until the completion of the period for the Administrator's review.
- (q) The provisions of Sec. 96.74(d)(1)(ii) as adopted for Tennessee are revised to read as follows:

For a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph (d)(1)(i) of this section, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or, if the certification tests are not completed by May 1, 2003, the calendar quarter covering May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or

(Rule 1200-3-27-.06, continued)

- (r) The provisions of Sec. 96.74(d)(2)(ii) as adopted for Tennessee are revised to read as follows:

Submit quarterly reports covering the period May 1 through September 30 of each year and including the hourly data and results of QA tests required under the annual and ozone season monitoring and reporting requirements for a continuous emission monitoring system. The NOx authorized account representative shall submit such quarterly reports, beginning with:

1. For a unit for which the owner or operator intends to apply or applies for early reduction credits, the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c). Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or
2. For a unit that commences operation on or before May 31, 2004, and that is not subject to paragraph (d)(2)(i) of this section, the calendar quarter covering May 1 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or the first hour of May 1, 2003; or
3. For a unit that commences operation after May 1, 2003 and during a control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commences operation; or
4. For a unit that commences operation after May 1, 2003 and not during a control period, the calendar quarter covering the first control period after the unit commences operation. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or the first hour of May 1 of the first control period after the unit commences operation.

- (s) The provisions of Sec. 96.85(a) as adopted for Tennessee are revised to read as follows:

Each NOx Budget opt-in permit will contain all elements required for a complete NOx Budget opt-in permit application under Sec. 96.22.

- (t) For the purpose of this rule, the provisions of part 96 and the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2 that refer to the year 2002 are amended to refer to year 2003, those that refer to year 2003 are amended to refer to year 2004, and those that refer to year 2004 are amended to refer to year 2005. For example, the requirement in Sec. 96.70(b)(2) for units that commence operation before January 1, 2002, to comply with Subpart H by May 1, 2002, is amended by this paragraph to specify that units that commence operation before January 1, 2003, must comply by May 1, 2003. Also for the purpose of this rule, the provisions of Part 96 and the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2 that refer to the specific date May 1, 2003, are amended to refer to the date May 31, 2004. For example, the specification in Sec. 96.6(c)(3) that a unit be subject to requirements starting on May 1, 2003, is amended by this paragraph to specify that the unit is subject starting on May 31, 2004, instead.
- (u) The citations in this rule 1200-3-27-.06, including in part 96 in this rule's paragraph (2), to sections within part 96 that are amended by paragraph (1) of this rule are to be taken as citations to those sections as amended by this paragraph.

(2) PART 96--NOx Budget Trading Program for State Implementation Plans

Subpart A--NOx Budget Trading Program General Provisions

(Rule 1200-3-27-.06, continued)

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Subpart A--NOx Budget Trading Program General Provisions

Sec. 96.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NOx Budget Trading Program for State implementation plans as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part, and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement. To the extent a State adopts requirements of this part, including at a minimum the requirements of subpart A (except for Sec. 96.4(b)), subparts B through D, subpart F (except for Sec. 96.55(c)), and subparts G and H of this part, the State authorizes the Administrator to assist the State in implementing the NOx Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.

Sec. 96.2 Definitions.

The terms used in this part shall have the meanings set forth in this section as follows:

Account certificate of representation means the completed and signed submission required by subpart B of this part for certifying the designation of a NOx authorized account representative for a NOx Budget source or a group of identified NOx Budget sources who is authorized to represent the owners

(Rule 1200-3-27-.06, continued)

and operators of such source or sources and of the NO<sub>x</sub> Budget units at such source or sources with regard to matters under the NO<sub>x</sub> Budget Trading Program.

Account number means the identification number given by the Administrator to each NO<sub>x</sub> Allowance Tracking System account.

Acid Rain emissions limitation means, as defined in Sec. 72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means the determination by the permitting authority or the Administrator of the number of NO<sub>x</sub> allowances to be initially credited to a NO<sub>x</sub> Budget unit or an allocation set-aside.

Automated data acquisition and handling system or DAHS means that component of the CEMS, or other emissions monitoring system approved for use under subpart H of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart H of this part.

Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

CAA means the CAA, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in Sec. 96.5, for a unit that is a NO<sub>x</sub> Budget unit under Sec. 96.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Sec. 96.5 or subpart I of this part, for a unit that is not a NO<sub>x</sub> Budget unit under Sec. 96.4 on the date the unit commences commercial operation, the date the unit becomes a NO<sub>x</sub> Budget unit under Sec. 96.4 shall be the unit's date of commencement of commercial operation.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in Sec. 96.5, for a unit that is a NO<sub>x</sub> Budget unit under Sec. 96.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Sec. 96.5 or subpart I of this part, for a unit that is not a NO<sub>x</sub> Budget unit under Sec. 96.4 on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> Budget unit under Sec. 96.4 shall be the unit's date of commencement of operation.

Common stack means a single flue through which emissions from two or more units are exhausted.

(Rule 1200-3-27-.06, continued)

Compliance account means a NO<sub>x</sub> Allowance Tracking System account, established by the Administrator for a NO<sub>x</sub> Budget unit under subpart F of this part, in which the NO<sub>x</sub> allowance allocations for the unit are initially recorded and in which are held NO<sub>x</sub> allowances available for use by the unit for a control period for the purpose of meeting the unit's NO<sub>x</sub> Budget emissions limitation.

Compliance certification means a submission to the permitting authority or the Administrator, as appropriate, that is required under subpart D of this part to report a NO<sub>x</sub> Budget source's or a NO<sub>x</sub> Budget unit's compliance or noncompliance with this part and that is signed by the NO<sub>x</sub> authorized account representative in accordance with subpart B of this part.

Continuous emission monitoring system or CEMS means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with part 75 of this chapter, in a continuous emission monitoring system:

Flow monitor;

Nitrogen oxides pollutant concentration monitors;

Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by subpart H of this part;

A continuous moisture monitor when such monitoring is required by subpart H of this part; and

An automated data acquisition and handling system.

Control period means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with subpart H of this part.

Energy Information Administration means the Energy Information Administration of the United States Department of Energy.

Excess emissions means any tonnage of nitrogen oxides emitted by a NO<sub>x</sub> Budget unit during a control period that exceeds the NO<sub>x</sub> Budget emissions limitation for the unit. Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil fuel-fired means, with regard to a unit:

The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

General account means a NO<sub>x</sub> Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.



(Rule 1200-3-27-.06, continued)

Generator means a device that produces electricity.

Heat input means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with subpart H of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

For the life of the unit;

For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

Maximum potential hourly heat input means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO<sub>2</sub>) or the minimum oxygen concentration (in percent O<sub>2</sub>).

Maximum potential NO<sub>x</sub> emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O<sub>2</sub>) or the minimum carbon dioxide concentration (in percent CO<sub>2</sub>), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

Maximum rated hourly heat input means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

Monitoring system means any monitoring system that meets the requirements of subpart H of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

Most stringent State or Federal NO<sub>x</sub> emissions limitation means, with regard to a NO<sub>x</sub> Budget opt-in source, the lowest NO<sub>x</sub> emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

(Rule 1200-3-27-.06, continued)

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

Non-title V permit means a federally enforceable permit administered by the permitting authority pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and part 70 or 71 of this chapter.

NOx allowance means an authorization by the permitting authority or the Administrator under the NOx Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

NOx allowance deduction or deduct NOx allowances means the permanent withdrawal of NOx allowances by the Administrator from a NOx Allowance Tracking System compliance account or overdraft account to account for the number of tons of NOx emissions from a NOx Budget unit for a control period, determined in accordance with subpart H of this part, or for any other allowance surrender obligation under this part.

NOx allowances held or hold NOx allowances means the NOx allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts F and G of this part, in a NOx Allowance Tracking System account.

NOx Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.

NOx Allowance Tracking System account means an account in the NOx Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NOx allowances.

NOx allowance transfer deadline means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NOx allowances may be submitted for recordation in a NOx Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NOx Budget emissions limitation for the control period immediately preceding such deadline.

NOx authorized account representative means, for a NOx Budget source or NOx Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NOx Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NOx Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NOx allowances held in the general account.

NOx Budget emissions limitation means, for a NOx Budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under Sec. 96.54(a) and (b), adjusted by any deductions of such NOx allowances to account for actual utilization under Sec. 96.42(e) for the control period or to account for excess emissions for a prior control period under Sec. 96.54(d) or to account for withdrawal from the NOx Budget Program, or for a change in regulatory status, for a NOx Budget opt-in source under Sec. 96.86 or Sec. 96.87.

NOx Budget opt-in permit means a NOx Budget permit covering a NOx Budget opt-in source.

NOx Budget opt-in source means a unit that has been elected to become a NOx Budget unit under the NOx Budget Trading Program and whose NOx Budget opt-in permit has been issued and is in effect under subpart I of this part.

(Rule 1200-3-27-.06, continued)

NOx Budget permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NOx Budget Trading Program requirements applicable to a NOx Budget source, to each NOx Budget unit at the NOx Budget source, and to the owners and operators and the NOx authorized account representative of the NOx Budget source and each NOx Budget unit.

NOx Budget source means a source that includes one or more NOx Budget units.

NOx Budget Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this part and pursuant to Sec. 51.121 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

NOx Budget unit means a unit that is subject to the NOx Budget Trading Program emissions limitation under Sec. 96.4 or Sec. 96.80.

Operating means, with regard to a unit under Secs. 96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NOx Budget permit under Sec. 96.83(a).

Operator means any person who operates, controls, or supervises a NOx Budget unit, a NOx Budget source, or unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Opt-in means to be elected to become a NOx Budget unit under the NOx Budget Trading Program through a final, effective NOx Budget opt-in permit under subpart I of this part.

Overdraft account means the NOx Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NOx Budget source where there are two or more NOx Budget units.

Owner means any of the following persons:

- (1) Any holder of any portion of the legal or equitable title in a NOx Budget unit or in a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or
- (2) Any holder of a leasehold interest in a NOx Budget unit or in a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or
- (3) Any purchaser of power from a NOx Budget unit or from a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from NOx Budget unit or the unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or
- (4) With respect to any general account, any person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.

(Rule 1200-3-27-.06, continued)

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the NOx Budget Trading Program in accordance with subpart C of this part.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to NOx allowances, the movement of NOx allowances by the Administrator from one NOx Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of part 60 of this chapter.

Serial number means, when referring to NOx allowances, the unique identification number assigned to each NOx allowance by the Administrator, under Sec. 96.53(c).

Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the 48 contiguous States and the District of Columbia specified in Sec. 51.121 of this chapter, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NOx Budget Trading Program pursuant to Sec. 51.121 of this chapter. To the extent a State incorporates by reference the provisions of this part, the term "State" shall mean the incorporating State. The term "State" shall have its conventional meaning where such meaning is clear from the context.

State trading program budget means the total number of NOx tons apportioned to all NOx Budget units in a given State, in accordance with the NOx Budget Trading Program, for use in a given control period.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery.

Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the CAA and part 70 or part 71 of this chapter. Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the CAA and part 70 or 71 of this chapter.

Ton or tonnage means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NOx Budget emissions limitation, total tons for a control period shall be

(Rule 1200-3-27-.06, continued)

calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

Unit means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

Unit load means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

- (1) The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or
- (2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means any hour (or fraction of an hour) during which a unit combusts any fuel.

Utilization means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with part 75 of this chapter if the NOx Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

#### Sec. 96.3 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu--British thermal unit.  
hr--hour.  
Kwh--kilowatt hour.  
lb--pounds.  
mmBtu--million Btu.  
MWe--megawatt electrical.  
ton--2000 pounds.  
CO2--carbon dioxide.  
NOx--nitrogen oxides.  
O2--oxygen.

#### Sec. 96.4 Applicability.

- (a) The following units in a State shall be NOx Budget units, and any source that includes one or more such units shall be a NOx Budget source, subject to the requirements of this part:
  - (1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or
  - (2) Any unit that is not a unit under paragraph (a)(1) of this section and that has a maximum design heat input greater than 250 mmBtu/hr.

(Rule 1200-3-27-.06, continued)

- (b) Notwithstanding paragraph (a) of this section, a unit under paragraph (a) of this section shall be subject only to the requirements of this paragraph (b) if the unit has a federally enforceable permit that meets the requirements of paragraph (b)(1) of this section and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with paragraph (b)(1)(ii) and (iii) of this section) that limits the unit's potential NOx mass emissions for the control period to 25 tons or less. Notwithstanding paragraph (a) of this section, starting with the effective date of such federally enforceable permit, the unit shall not be a NOx Budget unit.
- (1) For each control period under paragraph (b) of this section, the federally enforceable permit must:
  - (i) Restrict the unit to burning only natural gas or fuel oil.
  - (ii) Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NOx mass emissions by the unit's maximum potential hourly NOx mass emissions.
  - (iii) Require that the unit's potential NOx mass emissions shall be calculated as follows:
    - (A) Select the default NOx emission rate in Table 2 of Sec. 75.19 of this chapter that would otherwise be applicable assuming that the unit burns only the type of fuel (i.e., only natural gas or only fuel oil) that has the highest default NOx emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in paragraph (b)(1)(i) of this section; and
    - (B) Multiply the default NOx emission rate under paragraph (b)(1)(iii)(A) of this section by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the permitting authority to use a lower value for the unit's maximum rated hourly heat input than the value as defined under Sec. 96.2. The permitting authority may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.
  - (iv) Require that the owner or operator of the unit shall retain at the source that includes the unit, for 5 years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.
  - (v) Require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the permitting authority by November 1 of each year for which the unit is subject to the federally enforceable permit.
- (2) The permitting authority that issues the federally enforceable permit with the fuel use restriction under paragraph (b)(1)(i) and the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section will notify the Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority includes such restrictions. The permitting authority will also notify the Administrator in writing of each unit under paragraph (a) of this section whose

(Rule 1200-3-27-.06, continued)

federally enforceable permit issued by the permitting authority is revised to remove any such restriction, whose federally enforceable permit issued by the permitting authority includes any such restriction that is no longer applicable, or which does not comply with any such restriction.

- (3) If, for any control period under paragraph (b) of this section, the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section, the unit shall be a NOx Budget unit, subject to the requirements of this part. Such unit shall be treated as commencing operation and, for a unit under paragraph (a)(1) of this section, commencing commercial operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

#### Sec. 96.5 Retired unit exemption.

- (a) This section applies to any NOx Budget unit, other than a NOx Budget opt-in source, that is permanently retired.
- (b)
  - (1) Any NOx Budget unit, other than a NOx Budget opt-in source, that is permanently retired shall be exempt from the NOx Budget Trading Program, except for the provisions of this section, Secs. 96.2, 96.3, 96.4, 96.7 and subparts E, F, and G of this part.
  - (2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NOx authorized account representative (authorized in accordance with subpart B of this part) shall submit a statement to the permitting authority otherwise responsible for administering any NOx Budget permit for the unit. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section. After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.
- (c) Special provisions.
  - (1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart E of this part.
  - (2)
    - (i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the NOx authorized account representative of the source submits a complete NOx Budget permit application under Sec. 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(Rule 1200-3-27-.06, continued)

- (ii) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NOx authorized account representative of the source submits a complete NOx Budget permit application under Sec. 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.
- (3) The owners and operators and, to the extent applicable, the NOx authorized account representative of a unit exempt under this section shall comply with the requirements of the NOx Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.
- (4) A unit that is exempt under this section is not eligible to be a NOx Budget opt-in source under subpart I of this part.
- (5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.
- (6) Loss of exemption.
  - (i) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:
    - (A) The date on which the NOx authorized account representative submits a NOx Budget permit application under paragraph (c)(2) of this section; or
    - (B) The date on which the NOx authorized account representative is required under paragraph (c)(2) of this section to submit a NOx Budget permit application.
  - (ii) For the purpose of applying monitoring requirements under subpart H of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

#### Sec. 96.6 Standard requirements.

##### (a) Permit Requirements.

- (1) The NOx authorized account representative of each NOx Budget source required to have a federally enforceable permit and each NOx Budget unit required to have a federally enforceable permit at the source shall:
  - (i) Submit to the permitting authority a complete NOx Budget permit application under Sec. 96.22 in accordance with the deadlines specified in Sec. 96.21(b) and (c);



(Rule 1200-3-27-.06, continued)

- (ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NOx Budget permit application and issue or deny a NOx Budget permit.
  - (2) The owners and operators of each NOx Budget source required to have a federally enforceable permit and each NOx Budget unit required to have a federally enforceable permit at the source shall have a NOx Budget permit issued by the permitting authority and operate the unit in compliance with such NOx Budget permit.
  - (3) The owners and operators of a NOx Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NOx Budget permit application, and to have a NOx Budget permit, under subpart C of this part for such NOx Budget source.
- (b) Monitoring requirements.
- (1) The owners and operators and, to the extent applicable, the NOx authorized account representative of each NOx Budget source and each NOx Budget unit at the source shall comply with the monitoring requirements of subpart H of this part.
  - (2) The emissions measurements recorded and reported in accordance with subpart H of this part shall be used to determine compliance by the unit with the NOx Budget emissions limitation under paragraph (c) of this section.
- (c) Nitrogen oxides requirements.
- (1) The owners and operators of each NOx Budget source and each NOx Budget unit at the source shall hold NOx allowances available for compliance deductions under Sec. 96.54, as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NOx emissions for the control period from the unit, as determined in accordance with subpart H of this part, plus any amount necessary to account for actual utilization under Sec. 96.42(e) for the control period.
  - (2) Each ton of nitrogen oxides emitted in excess of the NOx Budget emissions limitation shall constitute a separate violation of this part, the CAA, and applicable State law.
  - (3) A NOx Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 1, 2003 or the date on which the unit commences operation.
  - (4) NOx allowances shall be held in, deducted from, or transferred among NOx Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this part.
  - (5) A NOx allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the NOx allowance was allocated.
  - (6) A NOx allowance allocated by the permitting authority or the Administrator under the NOx Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NOx Budget Trading Program. No provision of the NOx Budget Trading Program, the NOx Budget permit application, the NOx Budget permit, or an exemption under Sec. 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.

(Rule 1200-3-27-.06, continued)

- (7) A NOx allowance allocated by the permitting authority or the Administrator under the NOx Budget Trading Program does not constitute a property right.
  - (8) Upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of a NOx allowance to or from a NOx Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NOx Budget permit of the NOx Budget unit by operation of law without any further review.
- (d) Excess emissions requirements.
  - (1) The owners and operators of a NOx Budget unit that has excess emissions in any control period shall:
    - (i) Surrender the NOx allowances required for deduction under Sec. 96.54(d)(1); and
    - (ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under Sec. 96.54(d)(3).
- (e) Recordkeeping and Reporting requirements.
  - (1) Unless otherwise provided, the owners and operators of the NOx Budget source and each NOx Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.
    - (i) The account certificate of representation for the NOx authorized account representative for the source and each NOx Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with Sec. 96.13; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NOx authorized account representative.
    - (ii) All emissions monitoring information, in accordance with subpart H of this part; provided that to the extent that subpart H of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.
    - (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx Budget Trading Program.
    - (iv) Copies of all documents used to complete a NOx Budget permit application and any other submission under the NOx Budget Trading Program or to demonstrate compliance with the requirements of the NOx Budget Trading Program.
  - (2) The NOx authorized account representative of a NOx Budget source and each NOx Budget unit at the source shall submit the reports and compliance certifications required under the NOx Budget Trading Program, including those under subparts D, H, or I of this part.
- (f) Liability.

(Rule 1200-3-27-.06, continued)

- (1) Any person who knowingly violates any requirement or prohibition of the NOx Budget Trading Program, a NOx Budget permit, or an exemption under Sec. 96.5 shall be subject to enforcement pursuant to applicable State or Federal law.
- (2) Any person who knowingly makes a false material statement in any record, submission, or report under the NOx Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.
- (3) No permit revision shall excuse any violation of the requirements of the NOx Budget Trading Program that occurs prior to the date that the revision takes effect.
- (4) Each NOx Budget source and each NOx Budget unit shall meet the requirements of the NOx Budget Trading Program.
- (5) Any provision of the NOx Budget Trading Program that applies to a NOx Budget source (including a provision applicable to the NOx authorized account representative of a NOx Budget source) shall also apply to the owners and operators of such source and of the NOx Budget units at the source.
- (6) Any provision of the NOx Budget Trading Program that applies to a NOx Budget unit (including a provision applicable to the NOx authorized account representative of a NOx budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this part, the owners and operators and the NOx authorized account representative of one NOx Budget unit shall not be liable for any violation by any other NOx Budget unit of which they are not owners or operators or the NOx authorized account representative and that is located at a source of which they are not owners or operators or the NOx authorized account representative.
- (g) Effect on other authorities. No provision of the NOx Budget Trading Program, a NOx Budget permit application, a NOx Budget permit, or an exemption under Sec. 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NOx authorized account representative of a NOx Budget source or NOx Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the CAA.

Sec. 96.7 Computation of time.

- (a) Unless otherwise stated, any time period scheduled, under the NOx Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.
- (b) Unless otherwise stated, any time period scheduled, under the NOx Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.
- (c) Unless otherwise stated, if the final day of any time period, under the NOx Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Subpart B--NOx Authorized Account Representative for NOx Budget Sources

Sec. 96.10 Authorization and responsibilities of the NOx authorized account representative.

(Rule 1200-3-27-.06, continued)

- (a) Except as provided under Sec. 96.11, each NOx Budget source, including all NOx Budget units at the source, shall have one and only one NOx authorized account representative, with regard to all matters under the NOx Budget Trading Program concerning the source or any NOx Budget unit at the source.
- (b) The NOx authorized account representative of the NOx Budget source shall be selected by an agreement binding on the owners and operators of the source and all NOx Budget units at the source.
- (c) Upon receipt by the Administrator of a complete account certificate of representation under Sec. 96.13, the NOx authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NOx Budget source represented and each NOx Budget unit at the source in all matters pertaining to the NOx Budget Trading Program, not withstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.
- (d) No NOx Budget permit shall be issued, and no NOx Allowance Tracking System account shall be established for a NOx Budget unit at a source, until the Administrator has received a complete account certificate of representation under Sec. 96.13 for a NOx authorized account representative of the source and the NOx Budget units at the source.
- (e)
  - (1) Each submission under the NOx Budget Trading Program shall be submitted, signed, and certified by the NOx authorized account representative for each NOx Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NOx authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NOx Budget sources or NOx Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
  - (2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a NOx Budget source or a NOx Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

Sec. 96.11 Alternate NOx authorized account representative.

- (a) An account certificate of representation may designate one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.
- (b) Upon receipt by the Administrator of a complete account certificate of representation under Sec. 96.13, any representation, action, inaction, or submission by the alternate NOx authorized

(Rule 1200-3-27-.06, continued)

account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.

- (c) Except in this section and Secs. 96.10(a), 96.12, 96.13, and 96.51, whenever the term "NOx authorized account representative" is used in this part, the term shall be construed to include the alternate NOx authorized account representative.

Sec. 96.12 Changing the NOx authorized account representative and the alternate NOx authorized account representative; changes in the owners and operators.

- (a) Changing the NOx authorized account representative. The NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under Sec. 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.
- (b) Changing the alternate NOx authorized account representative. The alternate NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under Sec. 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.
- (c) Changes in the owners and operators.
  - (1) In the event a new owner or operator of a NOx Budget source or a NOx Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.
  - (2) Within 30 days following any change in the owners and operators of a NOx Budget source or a NOx Budget unit, including the addition of a new owner or operator, the NOx authorized account representative or alternate NOx authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

Sec. 96.13 Account certificate of representation.

- (a) A complete account certificate of representation for a NOx authorized account representative or an alternate NOx authorized account representative shall include the following elements in a format prescribed by the Administrator:
  - (1) Identification of the NOx Budget source and each NOx Budget unit at the source for which the account certificate of representation is submitted.

(Rule 1200-3-27-.06, continued)

- (2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative.
  - (3) A list of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source.
  - (4) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: "I certify that I was selected as the NOx authorized account representative or alternate NOx authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOx Budget source and each NOx Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on behalf of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit."
  - (5) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.
- (b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

Sec. 96.14 Objections concerning the NOx authorized account representative.

- (a) Once a complete account certificate of representation under Sec. 96.13 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under Sec. 96.13 is received by the Administrator.
- (b) Except as provided in Sec. 96.12(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative shall affect any representation, action, inaction, or submission of the NOx authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NOx Budget Trading Program.
- (c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NOx authorized account representative, including private legal disputes concerning the proceeds of NOx allowance transfers.

Subpart C--Permits

Sec. 96.20 General NOx Budget trading program permit requirements.

- (a) For each NOx Budget source required to have a federally enforceable permit, such permit shall include a NOx Budget permit administered by the permitting authority.

(Rule 1200-3-27-.06, continued)

- (1) For NOx Budget sources required to have a title V operating permit, the NOx Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such title V operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation, State review, and review by the Administrator.
- (2) For NOx Budget sources required to have a non-title V permit, the NOx Budget portion of the non-title V permit shall be administered in accordance with the permitting authority's regulations promulgated to administer non-title V permits, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such non-title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, State review, and review by the Administrator.
- (b) Each NOx Budget permit (including a draft or proposed NOx Budget permit, if applicable) shall contain all applicable NOx Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

Sec. 96.21 Submission of NOx Budget permit applications.

- (a) Duty to apply. The NOx authorized account representative of any NOx Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NOx Budget permit application under Sec. 96.22 by the applicable deadline in paragraph (b) of this section.
- (b)
  - (1) For NOx Budget sources required to have a title V operating permit:
    - (i) For any source, with one or more NOx Budget units under Sec. 96.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before May 1, 2003.
    - (ii) For any source, with any NOx Budget unit under Sec. 96.4 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.
  - (2) For NOx Budget sources required to have a non-title V permit:
    - (i) For any source, with one or more NOx Budget units under Sec. 96.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec.

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96.22 covering such NOx Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before May 1, 2003.

- (ii) For any source, with any NOx Budget unit under Sec. 96.4 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.

(c) Duty to reapply.

- (1) For a NOx Budget source required to have a title V operating permit, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 for the NOx Budget source covering the NOx Budget units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.
- (2) For a NOx Budget source required to have a non-title V permit, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 for the NOx Budget source covering the NOx Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.

Sec. 96.22 Information requirements for NOx Budget permit applications.

A complete NOx Budget permit application shall include the following elements concerning the NOx Budget source for which the application is submitted, in a format prescribed by the permitting authority:

- (a) Identification of the NOx Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;
- (b) Identification of each NOx Budget unit at the NOx Budget source and whether it is a NOx budget unit under Sec. 96.4 or under subpart I of this part;
- (c) The standard requirements under Sec. 96.6; and
- (d) For each NOx Budget opt-in unit at the NOx Budget source, the following certification statements by the NOx authorized account representative:
  - (1) "I certify that each unit for which this permit application is submitted under subpart I of this part is not a NOx Budget unit under 40 CFR 96.4 and is not covered by a retired unit exemption under 40 CFR 96.5 that is in effect."
  - (2) If the application is for an initial NOx Budget opt-in permit, "I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR 96.2."

Sec. 96.23 NOx Budget permit contents.



(Rule 1200-3-27-.06, continued)

- (a) Each NOx Budget permit (including any draft or proposed NOx Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under Sec. 96.22 as approved or adjusted by the permitting authority.
- (b) Each NOx Budget permit is deemed to incorporate automatically the definitions of terms under Sec. 96.2 and, upon recordation by the Administrator under subparts F, G, or I of this part, every allocation, transfer, or deduction of a NOx allowance to or from the compliance accounts of the NOx Budget units covered by the permit or the overdraft account of the NOx Budget source covered by the permit.

Sec. 96.24 Effective date of initial NOx Budget permit.

The initial NOx Budget permit covering a NOx Budget unit for which a complete NOx Budget permit application is timely submitted under Sec. 96.21(b) shall become effective by the later of:

- (a) May 1, 2003;
- (b) May 1 of the year in which the NOx Budget unit commences operation, if the unit commences operation on or before May 1 of that year;
- (c) The date on which the NOx Budget unit commences operation, if the unit commences operation during a control period; or
- (d) May 1 of the year following the year in which the NOx Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

Sec. 96.25 NOx Budget permit revisions.

- (a) For a NOx Budget source with a title V operating permit, except as provided in Sec. 96.23(b), the permitting authority will revise the NOx Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.
- (b) For a NOx Budget source with a non-title V permit, except as provided in Sec. 96.23(b), the permitting authority will revise the NOx Budget permit, as necessary, in accordance with the permitting authority's non-title V permits regulations addressing permit revisions.

Subpart D--Compliance Certification

Sec. 96.30 Compliance certification report.

- (a) Applicability and deadline. For each control period in which one or more NOx Budget units at a source are subject to the NOx Budget emissions limitation, the NOx authorized account representative of the source shall submit to the permitting authority and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.
- (b) Contents of report. The NOx authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NOx Budget emissions limitation for the control period covered by the report:

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- (1) Identification of each NOx Budget unit;
  - (2) At the NOx authorized account representative's option, the serial numbers of the NOx allowances that are to be deducted from each unit's compliance account under Sec. 96.54 for the control period;
  - (3) At the NOx authorized account representative's option, for units sharing a common stack and having NOx emissions that are not monitored separately or apportioned in accordance with subpart H of this part, the percentage of allowances that is to be deducted from each unit's compliance account under Sec. 96.54(e); and
  - (4) The compliance certification under paragraph (c) of this section.
- (c) Compliance certification. In the compliance certification report under paragraph (a) of this section, the NOx authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NOx Budget units at the source in compliance with the NOx Budget Trading Program, whether each NOx Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NOx Budget Trading Program applicable to the unit, including:
- (1) Whether the unit was operated in compliance with the NOx Budget emissions limitation;
  - (2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NOx emissions to the unit, in accordance with subpart H of this part;
  - (3) Whether all the NOx emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;
  - (4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, has changed; and
  - (5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

Sec. 96.31 Permitting authority's and Administrator's action on compliance certifications.

- (a) The permitting authority or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NOx Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(Rule 1200-3-27-.06, continued)

- (b) The Administrator may deduct NOx allowances from or transfer NOx allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

#### Subpart E--NOx Allowance Allocations

##### Sec. 96.40 State trading program budget.

The State trading program budget allocated by the permitting authority under Sec. 96.42 for a control period will equal the total number of tons of NOx emissions apportioned to the NOx Budget units under Sec. 96.4 in the State for the control period, as determined by the applicable, approved State implementation plan.

##### Sec. 96.41 Timing requirements for NOx allowance allocations.

- (a) By September 30, 1999, the permitting authority will submit to the Administrator the NOx allowance allocations, for the control periods in 2003, 2004, and 2005.
- (b) By April 1, 2003 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for the control periods in 2018 through 2032. If the permitting authority fails to submit to the Administrator the NOx allowance allocations in accordance with this paragraph (b), the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.
- (c) By April 1, 2004 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for any NOx allowances remaining in the allocation set-aside for the prior control period.

##### Sec. 96.42 NOx allowance allocations.

- (a) (1) The heat input (in mmBtu) used for calculating NOx allowance allocations for each NOx Budget unit under Sec. 96.4 will be:
  - (i) For a NOx allowance allocation under Sec. 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under Sec. 96.4(a)(1) or the control period in 1995 if the unit is under Sec. 96.4(a)(2); and
  - (ii) For a NOx allowance allocation under Sec. 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NOx allocation is being calculated.
- (2) The unit's total heat input for the control period in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter if the NOx Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.
- (b) For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(1) in the State that commenced operation before May 1 of the

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period used to calculate heat input under paragraph (a)(1) of this section, a total number of NOx allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40 in accordance with the following procedures:

- (1) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NOx allowance as appropriate.
  - (2) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under paragraph (b)(1) of this section so that the total number of NOx allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units divided by the total number of NOx allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.
- (c) For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(2) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NOx allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to non-electric generating units under Sec. 96.40 in accordance with the following procedures:
- (1) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(2) in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NOx allowance as appropriate.
  - (2) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under paragraph (c)(1) of this section so that the total number of NOx allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units divided by the total number of NOx allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.
- (d) For each control period under Sec. 96.41, the permitting authority will allocate NOx allowances to NOx Budget units under Sec. 96.4 in the State that commenced operation, or is projected to

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commence operation, on or after May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, in accordance with the following procedures:

- (1) The permitting authority will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NOx allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40, rounded to the nearest whole NOx allowance as appropriate.
- (2) The NOx authorized account representative of a NOx Budget unit under paragraph (d) of this section may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NOx allowances starting with the control period during which the NOx Budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under paragraph (b) or (c) of this section. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NOx Budget unit.
- (3) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under Sec. 96.4(a)(1) may request for a control period NOx allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NOx Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.
- (4) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under Sec. 96.4(a)(2) may request for a control period NOx allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NOx Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.
- (5) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under paragraph (d)(2) of this section in the order that the request is received by the permitting authority.
  - (i) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Sec. 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (3) of this section and, for units under Sec. 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (4) of this section.
  - (ii) If the allocation set-aside for the control period for which NOx allowances are requested has an amount of NOx allowances not less than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will allocate the amount of the NOx allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NOx Budget unit.
  - (iii) If the allocation set-aside for the control period for which NOx allowances are requested has a smaller amount of NOx allowances than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will

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deny in part the request and allocate only the remaining number of NOx allowances in the allocation set-aside to the NOx Budget unit.

- (iv) Once an allocation set-aside for a control period has been depleted of all NOx allowances, the permitting authority will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated for the control period.
- (6) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under paragraph (d)(5) of this section and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated for the control period to the NOx Budget unit.
- (e) For a NOx Budget unit that is allocated NOx allowances under paragraph (d) of this section for a control period, the Administrator will deduct NOx allowances under Sec. 96.54(b) or (e) to account for the actual utilization of the unit during the control period. The Administrator will calculate the number of NOx allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NOx allowance as appropriate, provided that the number of NOx allowances to be deducted shall be zero if the number calculated is less than zero:

NOx allowances deducted for actual utilization for units under Sec. 96.4(a)(1) = (Unit's NOx allowances allocated for control period) - (Unit's actual control period utilization x 0.15 lb/mmBtu); and

NOx allowances deducted for actual utilization for units under Sec. 96.4(a)(2) = (Unit's NOx allowances allocated for control period) - (Unit's actual control period utilization x 0.17 lb/mmBtu)

Where:

"Unit's NOx allowances allocated for control period" is the number of NOx allowances allocated to the unit for the control period under paragraph (d) of this section; and

"Unit's actual control period utilization" is the utilization (in mmBtu), as defined in Sec. 96.2, of the unit during the control period.

- (f) After making the deductions for compliance under Sec. 96.54(b) or (e) for a control period, the Administrator will notify the permitting authority whether any NOx allowances remain in the allocation set-aside for the control period. The permitting authority will allocate any such NOx allowances to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:

Unit's share of NOx allowances remaining in allocation set-aside = Total NOx allowances remaining in allocation set-aside x (Unit's NOx allowance allocation <divide> (State trading program budget excluding allocation set-aside))

Where:

"Total NOx allowances remaining in allocation set-aside" is the total number of NOx allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies;

"Unit's NOx allowance allocation" is the number of NOx allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set-aside applies; and

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“State trading program budget excluding allocation set-aside” is the State trading program budget under Sec. 96.40 for the control period to which the allocation set-aside applies multiplied by 95 percent if the control period is in 2003, 2004, or 2005 or 98 percent if the control period is in any year thereafter, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

#### Subpart F--NO<sub>x</sub> Allowance Tracking System

##### Sec. 96.50 NO<sub>x</sub> Allowance Tracking System accounts.

- (a) Nature and function of compliance accounts and overdraft accounts. Consistent with Sec. 96.51(a), the Administrator will establish one compliance account for each NO<sub>x</sub> Budget unit and one overdraft account for each source with one or more NO<sub>x</sub> Budget units. Allocations of NO<sub>x</sub> allowances pursuant to subpart E of this part or Sec. 96.88 and deductions or transfers of NO<sub>x</sub> allowances pursuant to Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part, or subpart I of this part will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.
- (b) Nature and function of general accounts. Consistent with Sec. 96.51(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to subpart G of this part will be recorded in the general account in accordance with this subpart.

##### Sec. 96.51 Establishment of accounts.

- (a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under Sec. 96.13, the Administrator will establish:
  - (1) A compliance account for each NO<sub>x</sub> Budget unit for which the account certificate of representation was submitted; and
  - (2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO<sub>x</sub> Budget units.
- (b) General accounts.
  - (1) Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:
    - (i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative;
    - (ii) At the option of the NO<sub>x</sub> authorized account representative, organization name and type of organization;
    - (iii) A list of all persons subject to a binding agreement for the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

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- (iv) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: "I certify that I was selected as the NOx authorized account representative or the NOx alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."
  - (v) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.
  - (vi) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.
- (2) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:
- (i) The Administrator will establish a general account for the person or persons for whom the application is submitted.
  - (ii) The NOx authorized account representative and any alternate NOx authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NOx allowances held in the general account in all matters pertaining to the NOx Budget Trading Program, notwithstanding any agreement between the NOx authorized account representative or any alternate NOx authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NOx authorized account representative or any alternate NOx authorized account representative by the Administrator or a court regarding the general account.
  - (iii) Each submission concerning the general account shall be submitted, signed, and certified by the NOx authorized account representative or any alternate NOx authorized account representative for the persons having an ownership interest with respect to NOx allowances held in the general account. Each such submission shall include the following certification statement by the NOx authorized account representative or any alternate NOx authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOx allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."



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- (iv) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iii) of this section.
- (3) (i) An application for a general account may designate one and only one NOx authorized account representative and one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.
- (ii) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section, any representation, action, inaction, or submission by any alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.
- (4) (i) The NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.
- (ii) The alternate NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.
- (iii) (A) In the event a new person having an ownership interest with respect to NOx allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.
- (B) Within 30 days following any change in the persons having an ownership interest with respect to NOx allowances in the general account, including the addition of persons, the NOx authorized account representative or any alternate NOx authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NOx allowances in the general account to include the change.

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- (5) (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.
  - (ii) Except as provided in paragraph (b)(4) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative or the finality of any decision or order by the Administrator under the NOx Budget Trading Program.
  - (iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account, including private legal disputes concerning the proceeds of NOx allowance transfers.
- (c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

Sec. 96.52 NOx Allowance Tracking System responsibilities of NOx authorized account representative.

- (a) Following the establishment of a NOx Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NOx allowances in the account, shall be made only by the NOx authorized account representative for the account.
- (b) Authorized account representative identification. The Administrator will assign a unique identifying number to each NOx authorized account representative.

Sec. 96.53 Recordation of NOx allowance allocations.

- (a) The Administrator will record the NOx allowances for 2003 in the NOx Budget units' compliance accounts and the allocation set-asides, as allocated under subpart E of this part. The Administrator will also record the NOx allowances allocated under Sec. 96.88(a)(1) for each NOx Budget opt-in source in its compliance account.
- (b) Each year, after the Administrator has made all deductions from a NOx Budget unit's compliance account and the overdraft account pursuant to Sec. 96.54, the Administrator will record NOx allowances, as allocated to the unit under subpart E of this part or under Sec. 96.88(a)(2), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the Administrator will also record NOx allowances, as allocated under subpart E of this part, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.
- (c) Serial numbers for allocated NOx allowances. When allocating NOx allowances to and recording them in an account, the Administrator will assign each NOx allowance a unique identification number that will include digits identifying the year for which the NOx allowance is allocated.

(Rule 1200-3-27-.06, continued)

Sec. 96.54 Compliance.

- (a) NOx allowance transfer deadline. The NOx allowances are available to be deducted for compliance with a unit's NOx Budget emissions limitation for a control period in a given year only if the NOx allowances:
  - (1) Were allocated for a control period in a prior year or the same year; and
  - (2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under Sec. 96.60 by the NOx allowance transfer deadline for that control period.
- (b) Deductions for compliance.
  - (1) Following the recordation, in accordance with Sec. 96.61, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under paragraph (a) of this section to cover the unit's NOx emissions (as determined in accordance with subpart H of this part), or to account for actual utilization under Sec. 96.42(e), for the control period:
    - (i) From the compliance account; and
    - (ii) Only if no more NOx allowances available under paragraph (a) of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).
  - (2) The Administrator will deduct NOx allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:
    - (i) Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of NOx allowances required for deduction to account for actual utilization under Sec. 96.42(e) for the control period; or
    - (ii) Until no more NOx allowances available under paragraph (a) of this section remain in the respective account.
- (c) (1) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.

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- (2) First-in, first-out. The Administrator will deduct NO<sub>x</sub> allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO<sub>x</sub> allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:
  - (i) Those NO<sub>x</sub> allowances that were allocated for the control period to the unit under subpart E or I of this part;
  - (ii) Those NO<sub>x</sub> allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;
  - (iii) Those NO<sub>x</sub> allowances that were allocated for a prior control period to the unit under subpart E or I of this part; and
  - (iv) Those NO<sub>x</sub> allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.
- (d) Deductions for excess emissions.
  - (1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO<sub>x</sub> allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.
  - (2) If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.
  - (3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO<sub>x</sub> Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:
    - (i) For purposes of determining the number of days of violation, if a NO<sub>x</sub> Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.
    - (ii) Each ton of excess emissions is a separate violation.
- (e) Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part:
  - (1) The NO<sub>x</sub> authorized account representative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted from each such unit's compliance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for a control period. Such

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identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.

- (2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this section) of the number of tons of NOx emissions, as determined in accordance with subpart H of this part, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under Sec. 96.42(e) for the control period.
- (f) The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (b), (d), or (e) of this section.

Sec. 96.55 Banking.

- (a) NOx allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:
  - (1) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx allowance is deducted or transferred under Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part, or subpart I of this part.
  - (2) The Administrator will designate, as a "banked" NOx allowance, any NOx allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to Sec. 96.54.
- (b) Each year starting in 2004, after the Administrator has completed the designation of banked NOx allowances under paragraph (a)(2) of this section and before May 1 of the year, the Administrator will determine the extent to which banked NOx allowances may be used for compliance in the control period for the current year, as follows:
  - (1) The Administrator will determine the total number of banked NOx allowances held in compliance accounts, overdraft accounts, or general accounts.
  - (2) If the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked NOx allowance may be deducted for compliance in accordance with Sec. 96.54.
  - (3) If the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked allowance may be deducted for compliance in accordance with Sec. 96.54, except as follows:
    - (i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located and divided by the total number of banked NOx

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allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.

- (ii) The Administrator will multiply the number of banked NOx allowances in each compliance account or overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with Sec. 96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with Sec. 96.54, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under Sec. 96.54.
- (c) Any NOx Budget unit may reduce its NOx emission rate in the 2001 or 2002 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2003 to the unit in accordance with the following requirements.
  - (1) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NOx emissions in accordance with subpart H of this part starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during the 2000 control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.
  - (2) NOx emission rate and heat input under paragraphs (c)(3) through (5) of this section shall be determined in accordance with subpart H of this part.
  - (3) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall reduce its NOx emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NOx emission rate in the 2000 control period.
  - (4) The NOx authorized account representative of a NOx Budget unit that meets the requirements of paragraphs (c)(1) and (3) of this section may submit to the permitting authority a request for early reduction credits for the unit based on NOx emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with paragraph (c)(3) of this section.
    - (i) In the early reduction credit request, the NOx authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NOx emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton.
    - (ii) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NOx emission rate reductions on which the request is based are made or such later date approved by the permitting authority.
  - (5) The permitting authority will allocate NOx allowances, to NOx Budget units meeting the requirements of paragraphs (c)(1) and (3) of this section and covered by early reduction requests meeting the requirements of paragraph (c)(4)(ii) of this section, in accordance with the following procedures:

(Rule 1200-3-27-.06, continued)

- (i) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of paragraphs (c)(1), (c)(3), and (c)(4)(ii) of this section are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of paragraphs (c)(2) and (4) of this section.
- (ii) If the State's compliance supplement pool has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under paragraph (c)(5)(i) of this section).
- (iii) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate NOx allowances to each NOx Budget unit covered by such accepted requests according to the following formula:

Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits) / (Total adjusted early reduction credits requested by all units)] x (Available NOx allowances from the State's compliance supplement pool)

where:

"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for 2001 and 2002 in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.

"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for 2001 and 2002 in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.

"Available NOx allowances from the State's compliance supplement pool" is the number of NOx allowances in the State's compliance supplement pool and available for early reduction credits for 2001 and 2002.

- (6) By May 1, 2003, the permitting authority will submit to the Administrator the allocations of NOx allowances determined under paragraph (c)(5) of this section. The Administrator will record such allocations to the extent that they are consistent with the requirements of paragraphs (c)(1) through (5) of this section.
- (7) NOx allowances recorded under paragraph (c)(6) of this section may be deducted for compliance under Sec. 96.54 for the control periods in 2003 or 2004. Notwithstanding paragraph (a) of this section, the Administrator will deduct as retired any NOx allowance that is recorded under paragraph (c)(6) of this section and is not deducted for compliance in accordance with Sec. 96.54 for the control period in 2003 or 2004.
- (8) NOx allowances recorded under paragraph (c)(6) of this section are treated as banked allowances in 2004 for the purposes of paragraphs (a) and (b) of this section.

Sec. 96.56 Account error.

(Rule 1200-3-27-.06, continued)

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NOx Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NOx authorized account representative for the account.

Sec. 96.57 Closing of general accounts.

- (a) The NOx authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NOx Allowance Tracking System and by correctly submitting for recordation under Sec. 96.60 an allowance transfer of all NOx allowances in the account to one or more other NOx Allowance Tracking System accounts.
- (b) If a general account shows no activity for a period of a year or more and does not contain any NOx allowances, the Administrator may notify the NOx authorized account representative for the account that the account will be closed and deleted from the NOx Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NOx allowances into the account under Sec. 96.60 or a statement submitted by the NOx authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart G--NOx Allowance Transfers

Sec. 96.60 Submission of NOx allowance transfers.

The NOx authorized account representatives seeking recordation of a NOx allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NOx allowance transfer shall include the following elements in a format specified by the Administrator:

- (a) The numbers identifying both the transferor and transferee accounts;
- (b) A specification by serial number of each NOx allowance to be transferred; and
- (c) The printed name and signature of the NOx authorized account representative of the transferor account and the date signed.

Sec. 96.61 EPA recordation.

- (a) Within 5 business days of receiving a NOx allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a NOx allowance transfer by moving each NOx allowance from the transferor account to the transferee account as specified by the request, provided that:
  - (1) The transfer is correctly submitted under Sec. 96.60;
  - (2) The transferor account includes each NOx allowance identified by serial number in the transfer; and
  - (3) The transfer meets all other requirements of this part.



(Rule 1200-3-27-.06, continued)

- (b) A NO<sub>x</sub> allowance transfer that is submitted for recordation following the NO<sub>x</sub> allowance transfer deadline and that includes any NO<sub>x</sub> allowances allocated for a control period prior to or the same as the control period to which the NO<sub>x</sub> allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO<sub>x</sub> allowance allocations in Sec. 96.53(b).
- (c) Where a NO<sub>x</sub> allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

Sec. 96.62 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a NO<sub>x</sub> allowance transfer under Sec. 96.61, the Administrator will notify each party to the transfer. Notice will be given to the NO<sub>x</sub> authorized account representatives of both the transferrer and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a NO<sub>x</sub> allowance transfer that fails to meet the requirements of Sec. 96.61(a), the Administrator will notify the NO<sub>x</sub> authorized account representatives of both accounts subject to the transfer of:
  - (1) A decision not to record the transfer, and
  - (2) The reasons for such non-recordation.
- (c) Nothing in this section shall preclude the submission of a NO<sub>x</sub> allowance transfer for recordation following notification of non-recordation.

Subpart H--Monitoring and Reporting

Sec. 96.70 General requirements.

The owners and operators, and to the extent applicable, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit, shall comply with the monitoring and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in Sec. 96.2 and in Sec. 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be replaced by the terms "NO<sub>x</sub> Budget unit," "NO<sub>x</sub> authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in Sec. 96.2.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each NO<sub>x</sub> Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NO<sub>x</sub> Budget opt-in permit is submitted and not denied or withdrawn, as provided in subpart I of this part:
  - (1) Install all monitoring systems required under this subpart for monitoring NO<sub>x</sub> mass. This includes all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, heat input, and flow, in accordance with Secs. 75.72 and 75.76.
  - (2) Install all monitoring systems for monitoring heat input, if required under Sec. 96.76 for developing NO<sub>x</sub> allowance allocations.

(Rule 1200-3-27-.06, continued)

- (3) Successfully complete all certification tests required under Sec. 96.71 and meet all other provisions of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraphs (a)(1) and (2) of this section.
  - (4) Record, and report data from the monitoring systems under paragraphs (a)(1) and (2) of this section.
- (b) Compliance dates. The owner or operator must meet the requirements of paragraphs (a)(1) through (a)(3) of this section on or before the following dates and must record and report data on and after the following dates:
  - (1) NOx Budget units for which the owner or operator intends to apply for early reduction credits under Sec. 96.55(d) must comply with the requirements of this subpart by May 1, 2000.
  - (2) Except for NOx Budget units under paragraph (b)(1) of this section, NOx Budget units under Sec. 96.4 that commence operation before January 1, 2002, must comply with the requirements of this subpart by May 1, 2002.
  - (3) NOx Budget units under Sec. 96.4 that commence operation on or after January 1, 2002 and that report on an annual basis under Sec. 96.74(d) must comply with the requirements of this subpart by the later of the following dates:
    - (i) May 1, 2002; or
    - (ii) The earlier of:
      - (A) 180 days after the date on which the unit commences operation or,
      - (B) For units under Sec. 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.
  - (4) NOx Budget units under Sec. 96.4 that commence operation on or after January 1, 2002 and that report on a control season basis under Sec. 96.74(d) must comply with the requirements of this subpart by the later of the following dates:
    - (i) The earlier of:
      - (A) 180 days after the date on which the unit commences operation or,
      - (B) For units under Sec. 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.
    - (ii) However, if the applicable deadline under paragraph (b)(4)(i) does not occur during a control period, then the next May 1 immediately following the date determined in accordance with paragraph (b)(4)(i) of this section.
  - (5) For a NOx Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2) or (b)(3) of this section or subpart I of this part:
    - (i) 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

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- (ii) However, if the unit reports on a control season basis under Sec. 96.74(d) and the applicable deadline under paragraph (b)(5)(i) of this section does not occur during the control period, May 1 immediately following the applicable deadline in paragraph (b)(5)(i) of this section.
- (6) For a unit for which an application for a NOx Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under subpart I of this part.
- (c) Reporting data prior to initial certification.
  - (1) The owner or operator of a NOx Budget unit that misses the certification deadline under paragraph (b)(1) of this section is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under paragraph (b)(2) of this section.
  - (2) The owner or operator of a NOx Budget under paragraphs (b)(3) or (b)(4) of this section must determine, record and report NOx mass, heat input (if required for purposes of allocations) and any other values required to determine NOx Mass (e.g. NOx emission rate and heat input or NOx concentration and stack flow) using the provisions of Sec. 75.70(g) of this chapter, from the date and hour that the unit starts operating until all required certification tests are successfully completed.
- (d) Prohibitions.
  - (1) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with Sec. 96.75.
  - (2) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NOx emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in Sec. 75.74 of this chapter.
  - (3) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NOx mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in Sec. 75.74 of this chapter.
  - (4) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:
    - (i) During the period that the unit is covered by a retired unit exemption under Sec. 96.5 that is in effect;
    - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit

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that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

- (iii) The NO<sub>x</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with Sec. 96.71(b)(2).

Sec. 96.71 Initial certification and recertification procedures

- (a) The owner or operator of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter, except that:
  - (1) If, prior to January 1, 1998, the Administrator approved a petition under Sec. 75.17(a) or (b) of this chapter for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under Sec. 75.66 of this chapter for an alternative to a requirement in Sec. 75.17 of this chapter, the NO<sub>x</sub> authorized account representative shall resubmit the petition to the Administrator under Sec. 96.75(a) to determine if the approval applies under the NO<sub>x</sub> Budget Trading Program.
  - (2) For any additional CEMS required under the common stack provisions in Sec. 75.72 of this chapter, or for any NO<sub>x</sub> concentration CEMS used under the provisions of Sec. 75.71(a)(2) of this chapter, the owner or operator shall meet the requirements of paragraph (b) of this section.
- (b) The owner or operator of a NO<sub>x</sub> Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under Sec. 75.19 shall also meet the requirements of paragraph (c) of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall also meet the requirements of paragraph (d) of this section. The owner or operator of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in Sec. 75.72 of this chapter, or that uses a NO<sub>x</sub> concentration CEMS under Sec. 75.71(a)(2) of this chapter also shall comply with the following initial certification and recertification procedures.
  - (1) Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by subpart H of part 75 of this chapter (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under Sec. 75.20 of this chapter. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in Sec. 96.70(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part in a location where no such monitoring system was previously installed, initial certification according to Sec. 75.20 is required.
  - (2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the permitting authority determines significantly affects the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input or to meet the requirements of Sec. 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system according to Sec. 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the

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Administrator or the permitting authority determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to Sec. 75.20(b) of this chapter. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

(3) Certification approval process for initial certifications and recertification.

- (i) Notification of certification. The NOx authorized account representative shall submit to the permitting authority, the appropriate and EPA Regional Office a written notice of the dates of certification in accordance with Sec. 96.73.
- (ii) Certification application. The NOx authorized account representative shall submit to the permitting authority a certification application for each monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in subpart H of part 75 of this chapter.
- (iii) Except for units using the low mass emission excepted methodology under Sec. 75.19 of this chapter, the provisional certification date for a monitor shall be determined using the procedures set forth in Sec. 75.20(a)(3) of this chapter. A provisionally certified monitor may be used under the NOx Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system or component thereof under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.
- (iv) Certification application formal approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (b)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the NOx Budget Trading Program.
  - (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.
  - (B) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NOx authorized account representative must submit the additional information required to complete the certification

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application. If the NO<sub>x</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section.

- (C) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3)(iv)(B) of this section has been met, the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.
- (D) Audit decertification. The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with Sec. 96.72(b).
- (v) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under paragraph (b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(3)(iv)(D) of this section, then:
  - (A) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under Sec. 75.20(a)(5)(i) of this chapter:
    - (1) For units using or intending to monitor for NO<sub>x</sub> emission rate and heat input or for units using the low mass emission excepted methodology under Sec. 75.19 of this chapter, the maximum potential NO<sub>x</sub> emission rate and the maximum potential hourly heat input of the unit.
    - (2) For units intending to monitor for NO<sub>x</sub> mass emissions using a NO<sub>x</sub> pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO<sub>x</sub> and the maximum potential flow rate of the unit under section 2.1 of appendix A of part 75 of this chapter;
  - (B) The NO<sub>x</sub> authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (b)(3)(i) and (ii) of this section; and
  - (C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
- (c) Initial certification and recertification procedures for low mass emission units using the excepted methodologies under Sec. 75.19 of this chapter. The owner or operator of a gas-fired

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or oil-fired unit using the low mass emissions excepted methodology under Sec. 75.19 of this chapter shall meet the applicable general operating requirements of Sec. 75.10 of this chapter, the applicable requirements of Sec. 75.19 of this chapter, and the applicable certification requirements of Sec. 96.71 of this chapter, except that the excepted methodology shall be deemed provisionally certified for use under the NOx Budget Trading Program, as of the following dates:

- (1) For units that are reporting on an annual basis under Sec. 96.74(d);
  - (i) For a unit that has commences operation before its compliance deadline under Sec. 96.71(b), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or
  - (ii) For a unit that commences operation after its compliance deadline under Sec. 96.71(b), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for permitting authority review, or
- (2) For units that are reporting on a control period basis under Sec. 96.74(b)(3)(ii) of this part:
  - (i) For a unit that commenced operation before its compliance deadline under Sec. 96.71(b), where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or
  - (ii) For a unit that commenced operation before its compliance deadline under Sec. 96.71(b), where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or
  - (iii) For a unit that commences operation after its compliance deadline under Sec. 96.71(b), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the permitting authority's review.
  - (iv) For a unit that has not operated after its compliance deadline under Sec. 96.71(b), where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority's review.
- (d) Certification/recertification procedures for alternative monitoring systems. The NOx authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall apply for certification to the permitting authority prior to use of the system under the NOx Trading Program. The NOx authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (b) of this section. The owner or operator of an alternative monitoring system shall comply with the notification and

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application requirements for certification according to the procedures specified in paragraph (b)(3) of this section and Sec. 75.20(f) of this chapter .

Sec. 96.72 Out of control periods.

- (a) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of part 75 of this chapter.
- (b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under Sec. 96.71 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in Sec. 96.71 for each disapproved system.

Sec. 96.73 Notifications.

The NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with Sec. 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

Sec. 96.74 Recordkeeping and reporting.

- (a) General provisions.
  - (1) The NO<sub>x</sub> authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of Sec. 96.10(e).
  - (2) If the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and which includes data and information required under this subpart or subpart H of part 75 of this chapter is not the same person as the designated representative or the alternative designated representative for the unit under part 72 of this chapter, the submission must also be signed by the designated representative or the alternative designated representative.
- (b) Monitoring plans.
  - (1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of Sec. 75.62 of this chapter, except that the monitoring plan shall also include all of the information required by subpart H of part 75 of this chapter.



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- (2) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of Sec. 75.62 of this chapter, except that the monitoring plan is only required to include the information required by subpart H of part 75 of this chapter.
- (c) Certification applications. The NO<sub>x</sub> authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under Sec. 96.71 including the information required under subpart H of part 75 of this chapter.
- (d) Quarterly reports. The NO<sub>x</sub> authorized account representative shall submit quarterly reports, as follows:
  - (1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO<sub>x</sub> budget unit chooses to meet the annual reporting requirements of this subpart H, the NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter beginning with:
    - (i) For units that elect to comply with the early reduction credit provisions under Sec. 96.55 of this part, the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or
    - (ii) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under Sec. 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or
    - (iii) For a unit that commences operation after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.
  - (2) If a NO<sub>x</sub> budget unit is not subject to an Acid Rain emission limitation, then the NO<sub>x</sub> authorized account representative shall either:
    - (i) Meet all of the requirements of part 75 related to monitoring and reporting NO<sub>x</sub> mass emissions during the entire year and meet the reporting deadlines specified in paragraph (d)(1) of this section; or
    - (ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under Sec. 75.74(d)(3) through September 30 of each year in accordance with the provisions of Sec. 75.74(b) of this chapter. The NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:
      - (A) For units that elect to comply with the early reduction credit provisions under Sec. 96.55, the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

(Rule 1200-3-27-.06, continued)

- (B) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under Sec. 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii), or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002; or
  - (C) For units that commence operation after May 1, 2002 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or
  - (D) For units that commence operation after May 1, 2002 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.
  - (E) For units that commence operation after May 1, 2002 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.
- (3) The NO<sub>x</sub> authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of part 75 of this chapter and Sec. 75.64 of this chapter.
    - (i) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of part 75 of this chapter for each NO<sub>x</sub> Budget unit (or group of units using a common stack) as well as information required in subpart G of part 75 of this chapter.
    - (ii) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of part 75 of this chapter for each NO<sub>x</sub> Budget unit (or group of units using a common stack).
  - (4) Compliance certification. The NO<sub>x</sub> authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(Rule 1200-3-27-.06, continued)

- (i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and
- (ii) For a unit with add-on NO<sub>x</sub> emission controls and for all hours where data are substituted in accordance with Sec. 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO<sub>x</sub> emissions; and
- (iii) For a unit that is reporting on a control period basis under Sec. 96.74(d) the NO<sub>x</sub> emission rate and NO<sub>x</sub> concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO<sub>x</sub> emissions.

Sec. 96.75 Petitions.

- (a) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart.
  - (1) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.
  - (2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Sec. 75.72 of this chapter, the petition is governed by paragraph (b) of this section.
- (b) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart.
  - (1) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Sec. 75.72 of this chapter or a NO<sub>x</sub> concentration CEMS used under 75.71(a)(2) of this chapter.
  - (2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent the petition under paragraph (b) of this section is approved by both the permitting authority and the Administrator.

Sec. 96.76 Additional requirements to provide heat input data for allocations purposes.

- (a) The owner or operator of a unit that elects to monitor and report NO<sub>x</sub> Mass emissions using a NO<sub>x</sub> concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source located in a state developing source allocations based upon heat input.

(Rule 1200-3-27-.06, continued)

- (b) The owner or operator of a unit that monitors and reports NO<sub>x</sub> mass emissions using a NO<sub>x</sub> concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source that is applying for early reduction credits under Sec. 96.55.

#### Subpart I--Individual Unit Opt-ins

##### Sec. 96.80 Applicability.

A unit that is in the State, is not a NO<sub>x</sub> Budget unit under Sec. 96.4, vents all of its emissions to a stack, and is operating, may qualify, under this subpart, to become a NO<sub>x</sub> Budget opt-in source. A unit that is a NO<sub>x</sub> Budget unit, is covered by a retired unit exemption under Sec. 96.5 that is in effect, or is not operating is not eligible to become a NO<sub>x</sub> Budget opt-in source.

##### Sec. 96.81 General.

Except otherwise as provided in this part, a NO<sub>x</sub> Budget opt-in source shall be treated as a NO<sub>x</sub> Budget unit for purposes of applying subparts A through H of this part.

##### Sec. 96.82 NO<sub>x</sub> authorized account representative.

A unit for which an application for a NO<sub>x</sub> Budget opt-in permit is submitted and not denied or withdrawn, or a NO<sub>x</sub> Budget opt-in source, located at the same source as one or more NO<sub>x</sub> Budget units, shall have the same NO<sub>x</sub> authorized account representative as such NO<sub>x</sub> Budget units.

##### Sec. 96.83 Applying for NO<sub>x</sub> Budget opt-in permit.

- (a) Applying for initial NO<sub>x</sub> Budget opt-in permit. In order to apply for an initial NO<sub>x</sub> Budget opt-in permit, the NO<sub>x</sub> authorized account representative of a unit qualified under Sec. 96.80 may submit to the permitting authority at any time, except as provided under Sec. 96.86(g):
  - (1) A complete NO<sub>x</sub> Budget permit application under Sec. 96.22;
  - (2) A monitoring plan submitted in accordance with subpart H of this part; and
  - (3) A complete account certificate of representation under Sec. 96.13, if no NO<sub>x</sub> authorized account representative has been previously designated for the unit.
- (b) Duty to reapply. The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget opt-in source shall submit a complete NO<sub>x</sub> Budget permit application under Sec. 96.22 to renew the NO<sub>x</sub> Budget opt-in permit in accordance with Sec. 96.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

##### Sec. 96.84 Opt-in process.

The permitting authority will issue or deny a NO<sub>x</sub> Budget opt-in permit for a unit for which an initial application for a NO<sub>x</sub> Budget opt-in permit under Sec. 96.83 is submitted, in accordance with Sec. 96.20 and the following:

(Rule 1200-3-27-.06, continued)

- (a) Interim review of monitoring plan. The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NOx Budget opt-in permit under Sec. 96.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NOx emissions rate and heat input of the unit are monitored and reported in accordance with subpart H of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.
- (b) If the permitting authority determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this part, the NOx emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this part for one full control period during which monitoring system availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NOx Budget unit" prior to issuance of a NOx Budget opt-in permit covering the unit.
- (c) Based on the information monitored and reported under paragraph (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NOx emissions rate shall be calculated as the unit's total NOx emissions (in lb) for the control period divided by the unit's baseline heat rate.
- (d) After calculating the baseline heat input and the baseline NOx emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NOx Budget opt-in permit on the NOx authorized account representative of the unit.
- (e) Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NOx Budget opt-in permit, the NOx authorized account representative of the unit must submit to the permitting authority a confirmation of the intention to opt in the unit or a withdrawal of the application for a NOx Budget opt-in permit under Sec. 96.83. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NOx Budget opt-in permit application.
- (f) Issuance of draft NOx Budget opt-in permit. If the NOx authorized account representative confirms the intention to opt-in the unit under paragraph (e) of this section, the permitting authority will issue the draft NOx Budget opt-in permit in accordance with Sec. 96.20.
- (g) Notwithstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NOx Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NOx Budget opt-in source under Sec. 96.80, the permitting authority will issue a draft denial of a NOx Budget opt-in permit for the unit in accordance with Sec. 96.20.
- (h) Withdrawal of application for NOx Budget opt-in permit. A NOx authorized account representative of a unit may withdraw its application for a NOx Budget opt-in permit under Sec. 96.83 at any time prior to the issuance of the final NOx Budget opt-in permit. Once the application for a NOx Budget opt-in permit is withdrawn, a NOx authorized account representative wanting to reapply must submit a new application for a NOx Budget permit under Sec. 96.83.
- (i) Effective date. The effective date of the initial NOx Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NOx Budget opt-in permit by the permitting authority. The unit shall be a NOx Budget opt-in source and a NOx Budget unit as of the effective date of the initial NOx Budget opt-in permit.

(Rule 1200-3-27-.06, continued)

Sec. 96.85 NOx Budget opt-in permit contents.

- (a) Each NOx Budget opt-in permit (including any draft or proposed NOx Budget opt-in permit, if applicable) will contain all elements required for a complete NOx Budget opt-in permit application under Sec. 96.22 as approved or adjusted by the permitting authority.
- (b) Each NOx Budget opt-in permit is deemed to incorporate automatically the definitions of terms under Sec. 96.2 and, upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of NOx allowances to or from the compliance accounts of each NOx Budget opt-in source covered by the NOx Budget opt-in permit or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located.

Sec. 96.86 Withdrawal from NOx Budget Trading Program.

- (a) Requesting withdrawal. To withdraw from the NOx Budget Trading Program, the NOx authorized account representative of a NOx Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.
- (b) Conditions for withdrawal. Before a NOx Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NOx Budget Trading Program and the NOx Budget opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:
  - (1) For the control period immediately before the withdrawal is to be effective, the NOx authorized account representative must submit or must have submitted to the permitting authority an annual compliance certification report in accordance with Sec. 96.30.
  - (2) If the NOx Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NOx Budget opt-in source's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, the full amount required under Sec. 96.54(d) for the control period.
  - (3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the Administrator will deduct from the NOx Budget opt-in source's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to that source under Sec. 96.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NOx Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.
- (c) A NOx Budget opt-in source that withdraws from the NOx Budget Trading Program shall comply with all requirements under the NOx Budget Trading Program concerning all years for which such NOx Budget opt-in source was a NOx Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.
- (d) Notification.

(Rule 1200-3-27-.06, continued)

- (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of NOx allowances required), the permitting authority will issue a notification to the NOx authorized account representative of the NOx Budget opt-in source of the acceptance of the withdrawal of the NOx Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.
- (2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the NOx authorized account representative of the NOx Budget opt-in source that the NOx Budget opt-in source's request to withdraw is denied. If the NOx Budget opt-in source's request to withdraw is denied, the NOx Budget opt-in source shall remain subject to the requirements for a NOx Budget opt-in source.
- (e) Permit amendment. After the permitting authority issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the NOx Budget permit covering the NOx Budget opt-in source to terminate the NOx Budget opt-in permit as of the effective date specified under paragraph (d)(1) of this section. A NOx Budget opt-in source shall continue to be a NOx Budget opt-in source until the effective date of the termination.
- (f) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the NOx Budget opt-in source's request to withdraw, the NOx authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.
- (g) Ability to return to the NOx Budget Trading Program. Once a NOx Budget opt-in source withdraws from the NOx Budget Trading Program and its NOx Budget opt-in permit is terminated under this section, the NOx authority account representative may not submit another application for a NOx Budget opt-in permit under Sec. 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NOx Budget opt-in permit became effective.

Sec. 96.87 Change in regulatory status.

- (a) Notification. When a NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4, the NOx authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NOx Budget opt-in source's regulatory status, within 30 days of such change.
- (b) Permitting authority's and Administrator's action.
  - (1) (i) When the NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4, the permitting authority will revise the NOx Budget opt-in source's NOx Budget opt-in permit to meet the requirements of a NOx Budget permit under Sec. 96.23 as of an effective date that is the date on which such NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4.
  - (ii) (A) The Administrator will deduct from the compliance account for the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, NOx allowances equal in number to and allocated for the same or a prior control period as:

(Rule 1200-3-27-.06, continued)

- (1) Any NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under Sec. 96.88 for any control period after the last control period during which the unit's NOx Budget opt-in permit was effective; and
  - (2) If the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under Sec. 96.88 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.
- (B) The NOx authorized account representative shall ensure that the compliance account of the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, includes the NOx allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.
- (iii)
  - (A) For every control period during which the NOx Budget permit revised under paragraph (b)(1)(i) of this section is effective, the NOx Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NOx allowance allocations under Sec. 96.42, as a unit that commenced operation on the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NOx allowances under Sec. 96.42.
  - (B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NOx allowances will be allocated to the NOx Budget unit under paragraph (b)(1)(i) of this section under Sec. 96.42 for the control period: the number of NOx allowances otherwise allocated to the NOx Budget unit under Sec. 96.42 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.
- (2)
  - (i) When the NOx authorized account representative of a NOx Budget opt-in source does not renew its NOx Budget opt-in permit under Sec. 96.83(b), the Administrator will deduct from the NOx Budget opt-in unit's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to the NOx Budget opt-in source under Sec. 96.88 for any control period after the last control period for which the NOx Budget opt-in permit is effective. The NOx authorized account representative shall ensure that the NOx Budget opt-in source's compliance account or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located includes the NOx allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of



(Rule 1200-3-27-.06, continued)

NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.

- (ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the NOx Budget opt-in source's compliance account. If any NOx allowances remain in the compliance account after completion of such deduction and any deduction under Sec. 96.54, the Administrator will close the NOx Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.

Sec. 96.88 NOx allowance allocations to opt-in units.

- (a) NOx allowance allocation.
  - (1) By December 31 immediately before the first control period for which the NOx Budget opt-in permit is effective, the permitting authority will allocate NOx allowances to the NOx Budget opt-in source and submit to the Administrator the allocation for the control period in accordance with paragraph (b) of this section.
  - (2) By no later than December 31, after the first control period for which the NOx Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NOx allowances to the NOx Budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with paragraph (b) of this section.
- (b) For each control period for which the NOx Budget opt-in source has an approved NOx Budget opt-in permit, the NOx Budget opt-in source will be allocated NOx allowances in accordance with the following procedures:
  - (1) The heat input (in mmBtu) used for calculating NOx allowance allocations will be the lesser of:
    - (i) The NOx Budget opt-in source's baseline heat input determined pursuant to Sec. 96.84(c); or
    - (ii) The NOx Budget opt-in source's heat input, as determined in accordance with subpart H of this part, for the control period in the year prior to the year of the control period for which the NOx allocations are being calculated.
  - (2) The permitting authority will allocate NOx allowances to the NOx Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this section multiplied by the lesser of:
    - (i) The NOx Budget opt-in source's baseline NOx emissions rate (in lb/mmBtu) determined pursuant to Sec. 96.84(c); or
    - (ii) The most stringent State or Federal NOx emissions limitation applicable to the NOx Budget opt-in source during the control period.

Subpart J--Mobile and Area Sources [Reserved]

(Rule 1200-3-27-.06, continued)

**Authority:** T.C.A. §§68-201-105 and 4-5-201 et. seq. **Administrative History:** Original rule filed July 9, 2001; effective September 22, 2001. Amendment filed May 13, 2003; effective July 27, 2003. Amendment filed August 5, 2003; effective October 19, 2003.

**1200-3-27-.07 VOLUNTARY NOX EMISSIONS REDUCTION PROGRAM.**

- (1) The purpose of this rule is to provide a method by which sources that emit NOx but are not subject to the requirements of Rule .06 of this chapter can voluntarily make emission reductions and thereby earn marketable NOx allowances for use in the EPA's NOx Budget Trading Program.
- (2) Terms used in this rule shall have the meanings given in Rule .06 of this chapter, Rule .02 of this chapter, and other rules of Division 1200-3, in this order of precedence.
- (3) Any owner or operator of a stationary source may submit to the technical secretary a NOx emission reduction proposal, as described in Paragraph (6) below, for reducing NOx emissions during control periods, if each emission unit from which NOx reductions at the source will be obtained meets the following criteria at the time a NOx emission reduction proposal is submitted and during each control period thereafter for which creditable emission reductions are claimed:
  - (a) Discharges NOx emissions through a stack;
  - (b) Is fossil fuel-fired;
  - (c) Has a major source operating permit issued under Chapter 1200-3-9-.02 or a comparable local program rule;
  - (d) Is not subject to the requirements of Rule .06 of this chapter, including opt-in units;
  - (e) Is in compliance with all NOx emission requirements applicable to the source and unit so that any NOx reductions made pursuant to this rule are surplus to those requirements;
  - (f) Installed or implemented a NOx emission control strategy after July 1, 2002;
  - (g) Conducted an emission baseline determination using the protocol described in Paragraph (5) below prior to initiating the NOx emission control strategy;
  - (h) Makes emission reductions that are not the result of shutting down; and
  - (i) Is not an IC engine that according to EPA's final NOx SIP Call inventory had actual average daily NOx emissions of one ton or more during the five-month period May 1 through September 30, 1995.
- (4) Any owner or operator of an eligible unit may participate by:
  - (a) Submitting a NOx emission reduction proposal in accordance with Paragraph (6) below;
  - (b) Making NOx emission reductions during a control period that are federally enforceable, quantifiable, and surplus to regulatory requirements; and
  - (c) Submitting a quantification report, in accordance with Paragraph (7) below, after any control period for which creditable reductions are claimed.
- (5) Emission reductions made at a participating unit shall be quantified using an emission reduction quantification protocol approved by the EPA or approved by the technical secretary and submitted to EPA for approval. The emissions measurements recorded and reported in accordance with this

(Rule 1200-3-27-.07, continued)

protocol shall be used to determine the emission reductions made by the source under this rule and eligible to be issued as allowances for use in the EPA's NOx Budget Trading Program. Each participating unit shall comply with the applicable monitoring requirements prescribed by the approved protocol.

- (6) Each NOx emission reduction proposal shall contain the elements and be processed as follows:
  - (a) Each NOx emission reduction proposal shall include the following:
    1. Information identifying each emission reduction unit from which NOx emission reductions have been or will be achieved, including the name, location, operating permit number, and identification number of the source and unit;
    2. Description of the NOx controls present on the unit prior to making emission reductions;
    3. Explanation of the methods used to achieve the NOx emission reductions;
    4. Identification of the emission reduction quantification protocol, approved by the EPA or approved by the technical secretary and submitted to EPA for approval, that will be used to calculate the proposed emission reductions; and
    5. Emissions baseline determination for each unit made in accordance with the approved protocol described in Paragraph (5) above.
  - (b) The technical secretary shall notify in writing the owner or operator submitting a NOx emission reduction proposal of his decision with respect to the proposal. If the technical secretary disapproves a proposal, this written notice shall include a statement of the specific reasons for the disapproval of the proposal. Following such a disapproval the owner or operator may submit an amended or a different NOx emissions reduction proposal for the unit.
- (7) Each NOx emission reduction quantification report shall be submitted and processed as follows:
  - (a) By October 30 following the control period during which the emission reductions were made, the owner or operator of the participating unit must submit a quantification report to the technical secretary stating the reductions achieved during the control period.
  - (b) The quantification report shall include the following:
    1. The amount in tons of the NOx emission reductions made during the control season, calculated based on the approved quantification protocol and including supporting calculations and documentation;
    2. Certification by the owner or operator that the NOx reductions achieved during the control period were calculated based on the approved protocol; and
    3. A written statement signed by the owner or operator certifying the following:

Based on information and belief formed after reasonable inquiry, I believe the statements and information in this document are true, accurate and complete.
  - (c) The technical secretary shall review the quantification report and either approve the emission reductions as being in accordance with the quantification protocol or disapprove them. If they are approved, the technical secretary shall notify the EPA of such approval in accordance with Paragraph (8) below. If they are disapproved, the technical secretary shall notify the source in

(Rule 1200-3-27-.07, continued)

writing and shall state the specific reasons for the disapproval. The source may rectify the deficiencies in its quantification report and submit an amended report.

- (8) Upon approval of a quantification report, the technical secretary shall notify the EPA of the number of allowances to be transferred from the state's general account into an account of the source or its designee for use in the federal NO<sub>x</sub> Budget Trading Program. The total number of allowances to be transferred shall be ninety percent (90%) of the creditable NO<sub>x</sub> emission reductions achieved by the unit. The remaining ten percent (10%) shall be retired by the state. The Administrator shall record the transfer.
- (9) Each NO<sub>x</sub> allowance issued for NO<sub>x</sub> emission reductions meeting the requirements of this rule is an authorization to emit one ton of NO<sub>x</sub> in accordance with the federal NO<sub>x</sub> Budget Trading Program.
- (10) Within 90 days after the NO<sub>x</sub> allowance transfer deadline for the NO<sub>x</sub> Budget Trading Program, the technical secretary shall provide the Administrator a report reconciling the allowances transferred for the purpose of this rule, including:
  - (a) The number of allowances deposited into the state's general account for the control period immediately preceding such deadline;
  - (b) The number of allowances earned by sources pursuant to this rule; and
  - (c) The number of unused allowances, which shall be retired.
- (11) The owner or operator of a source submitting a quantification report that contains an error that affects an allocation must notify the technical secretary in writing within 30 days of the error.
- (12) If the owner or operator of a unit has submitted a quantification report that incorrectly overstated the amount of emission reductions achieved and, as a result of this report, allowances in excess of those that should have been transferred from the state's general account were transferred into another account for use in the federal NO<sub>x</sub> Budget Trading Program, the owner or operator shall place into the state's general account an amount of allowances equal to three times the amount of the overstatement within 30 days of discovery of the overstatement by the owner or operator.
- (13) The owner or operator of a source, or its designee, shall maintain all records used to calculate the emission reductions in accordance with the quantification protocol. Each record shall be maintained for five (5) years following the date the record is created and shall be made available for inspection by the technical secretary or his representative immediately upon request.
- (14) After the third control period this program has been in effect, and every three years thereafter, the technical secretary shall evaluate the program and submit a report to the board, summarizing the results of the evaluation.

**Authority:** T.C.A. §§4-5-201 et seq. and 68-201-105. **Administrative History:** Original rule filed September 11, 2003; effective November 25, 2003.